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STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE
1999 GENERAL ASSEMBLY
AT ITS
REGULAR SESSION 1999
BEGINNING ON
MONDAY, THE TWENTY-SEVENTH DAY OF
JANUARY, A.D. 1999

AND AT ITS
EXTRA SESSION 1999
BEGINNING ON
WEDNESDAY, THE FIFTEENTH DAY OF
DECEMBER, A.D. 1999

HELD IN THE CITY OF RALEIGH

ISSUED BY
SECRETARY OF STATE ELAINE F. MARSHALL

PUBLISHED BY AUTHORITY

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H.B. 794

SESSION LAW 1999-289

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE
CORPORATE LIMITS OF THE TOWN OF FARMVILLE.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Farmville:

BEGINNING at an iron pipe at the intersection of the south line of the CSX Railroad right of way with the east line of the Monk-Austin International, Inc., tract as recorded in deed book 323 page 655, Pitt County Deed Registry, said iron being located *S 86-06-08 W 3033.035 feet from a concrete monument marking North Carolina Geodetic Survey station "PARKER" having North Carolina Coordinate System coordinates of $x = 2,417,773.238$ feet and $y = 673,990.171$ feet, North American Datum of 1983, and running thence with the south line of the CSX Railroad right of way and a new corporate limit line for the Town of Farmville N 86-14-38 E 866.705 feet to an iron pipe in the west line of the Southern States Cooperative, Inc. lot, a point in the existing corporate limits of the Town of Farmville; thence with the existing corporate limits of the Town of Farmville the remaining courses and distances in this description as follows: along the west line of the Southern States Cooperative, Inc. lot S 06-04-22 W 353.468 feet to an iron pipe; thence with the south line of the Southern States Cooperative lot N 88-54-33 E 902.408 feet to an iron pipe; thence with the south line of the Southern States lot S 81-39-10 E 354.539 feet to an iron in the west line of Fields Street; thence crossing Fields Street S 81-39-10 E 71.655 feet to a point in the east line of Fields Street; thence with the east line of Fields Street S 39-59-54 W 596.383 feet to an iron pipe at the intersection of the north line of Perry Street with the east line of Fields Street; thence with the east line of Fields Street S 39-59-54 W 50.000 feet to an iron pipe in the south line of Perry Street; thence along the south line of Perry Street along a curve whose chord bears S 63-57-50 E 132.705 feet to an iron pipe; thence along the south line of Perry Street S 77-55-33 E 442.050 feet to an iron pipe at the northwest corner of Williams Acres, Section 3; thence along the west line of Williams Acres, Section 3, S 12-40-45 W 564.915 feet to an iron pipe; thence with the south line of lot 6, Williams Acres, Section 3, S 77-19-15 E 130.000 feet to an iron pipe in the west line of Wright Drive; thence with the west line of Wright Drive S 12-40-45 W 277.522 feet to an iron pipe; thence with the south line of Wright Drive S 77-19-15 E 40.000 feet to an iron pipe in the east line of Wright Drive; thence with the south line of Williams Acres, Section 2, N 89-52-45 E 48.400 feet to an iron pipe in a ditch; thence continuing with the south line of Williams Acres, Section 2, and said ditch S 81-10-15 E 483.861 feet to a point in the west line of the old East Carolina Railway right of way; thence with said right of way along a curve whose chord bears S 03-29-01 E

562.009 feet to a point in the Farmville Housing Authority tract; thence with the north line of said tract N 74-03-31 W 41.544 feet to an iron pipe; thence with the west line of the Farmville Housing Authority tract S 09-50-43 W 433.299 feet to an iron pipe in the north line of Darden Street extended; thence S 70-41-16 E 144.102 feet with the north line of Darden Street extended to an iron pipe in the west line of Williams Street extended; thence with the west line of Williams Street extended S 19-21-11 W 30.000 feet to an iron pipe; thence with the south line of Darden Street extended N 70-41-13 W 139.078 feet to an iron pipe; thence with the west line of the Farmville Housing Authority tract S 09-50-43 W 325.724 feet to an iron pipe at the northwest corner of the Carl W. Tugwell lot; thence with the west line of the Tugwell lot S 30-10-04 W 402.849 feet to an iron pipe in the north line of Marlboro Road (US 264A); thence with the north line of Marlboro Road N 62-08-42 W 1396.163 feet to a point in a ditch, a corner with the Farmville Tractor and Implement Company lot; thence with the east line of said lot and a ditch N 19-37-41 E 747.348 feet and N 04-22-08 E 145.640 feet to a point; thence along the north line of said lot S 84-22-20 W 723.087 feet to a point in a ditch, a corner with W. A. Allen; thence with the Allen line N 13-04-35 W 115.496 feet and N 11-34-46 W 374.815 feet to a point in the South line of Fields Street; thence the same course continued crossing Fields Street N 11-34-46 W 64.918 feet to a point in the north line of Fields Street; thence with the north line of Fields Street S 55-53-01 W 631.102 feet to an iron pipe at the northeast corner of the Monk-Austin Sales and Administration, Inc. tract; thence along the north line of said tract N 34-06-46 W 369.849 feet to an iron pipe and N 67-03-35 W 380.306 feet to an iron pipe in the west line of the Monk-Austin Processing, Inc. tract; thence along said line N 15-57-40 E 1580.938 feet to an iron pipe in the south line of the CSX Railroad right of way, the point of beginning, containing 140.83 acres more or less.

Section 2. The annexation of the property described in Section 1 is subject to the following conditions:

- (1) The property is annexed as agricultural, horticultural, or forestland that is being taxed at present-use land value pursuant to G.S. 105-277.4, and the Pitt County Tax Assessor certifies to the Town that the land meets this requirement. Upon request for certification or upon any change in the certification, the assessor shall determine within 30 days whether the land meets the requirements and report the results to the Town.
- (2) The annexation shall become effective September 1, 1999, and the property shall be considered a part of the Town only for purposes of establishing Town boundaries for additional annexations pursuant to Article 4A of the General Statutes and for the exercise of the Town's extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes. For all other purposes, the annexation shall not

become effective until the last day of the month in which the tract or part thereof becomes ineligible for present-use value classification pursuant to G.S. 105-227.4 or no longer meets the requirements specified above.

- (3) Until annexation becomes effective, the property shall not be entitled to services from the Town and shall not be subject to Town taxes. After annexation becomes effective, no back tax payments shall be required as a result of a change from present-use value.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law on the date it was ratified.

H.B. 1095

SESSION LAW 1999-290

AN ACT AUTHORIZING THE NORTH CAROLINA MEDICAL BOARD AND THE BOARD OF PHARMACY TO ADOPT RULES TO APPROVE CLINICAL PHARMACIST PRACTITIONERS TO PRACTICE DRUG THERAPY MANAGEMENT PURSUANT TO A DRUG THERAPY MANAGEMENT AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-6 reads as rewritten:

"§ 90-6. ~~Regulations~~ Rules governing applicants for license, examinations, etc.; appointment of ~~subcommittee~~ subcommittees.

(a) The North Carolina Medical Board is empowered to prescribe such ~~regulations~~ rules as it may deem proper, governing applicants for license, admission to examinations, the conduct of applicants during examinations, and the conduct of examinations proper.

(b) The North Carolina Medical Board shall appoint and maintain a subcommittee to work jointly with a subcommittee of the Board of Nursing to develop rules ~~and regulations~~ to govern the performance of medical acts by registered nurses, including the determination of reasonable fees to accompany an application for approval not to exceed one hundred dollars (\$100.00) and for renewal of approval not to exceed fifty dollars (\$50.00). The fee for reactivation of an inactive incomplete application shall be five dollars (\$5.00). Rules ~~and regulations~~ developed by this subcommittee from time to time shall govern the performance of medical acts by registered nurses and shall become effective when adopted by both the North Carolina Medical Board and the Board of Nursing. The North Carolina Medical Board shall have responsibility for securing compliance with these ~~regulations~~ rules.

(c) The North Carolina Medical Board shall appoint and maintain a subcommittee of four licensed physicians to work jointly with a subcommittee of the North Carolina Board of Pharmacy to develop rules to govern the performance of medical acts by clinical pharmacist

practitioners, including the determination of reasonable fees to accompany an application for approval not to exceed one hundred dollars (\$100.00) and for renewal of approval not to exceed fifty dollars (\$50.00). The fee for reactivation of an inactive incomplete application shall be five dollars (\$5.00). Rules recommended by the subcommittee shall be adopted in accordance with Chapter 150B of the General Statutes by both the North Carolina Medical Board and the North Carolina Board of Pharmacy and shall not become effective until adopted by both Boards. The North Carolina Medical Board shall have responsibility for ensuring compliance with these rules."

Section 2. G.S. 90-18(c) is amended by adding a new subdivision to read:

"(3a) The provision of drug therapy management by a licensed pharmacist engaged in the practice of pharmacy pursuant to an agreement that is physician, pharmacist, patient, and disease specific when performed in accordance with rules and rules developed by a joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and approved by both Boards. Drug therapy management shall be defined as: (i) the implementation of predetermined drug therapy which includes diagnosis and product selection by the patient's physician; (ii) modification of prescribed drug dosages, dosage forms, and dosage schedules; and (iii) ordering tests; (i), (ii), and (iii) shall be pursuant to an agreement that is physician, pharmacist, patient, and disease specific."

Section 3. Article 1 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-18.4. Limitations on clinical pharmacist practitioners."

(a) Any pharmacist who is approved under the provisions of G.S. 90-18(c)(3a) to perform medical acts, tasks, and functions may use the title 'clinical pharmacist practitioner'. Any other person who uses the title in any form or holds himself or herself out to be a clinical pharmacist practitioner or to be so licensed shall be deemed to be in violation of this Article.

(b) Clinical pharmacist practitioners are authorized to implement predetermined drug therapy, which includes diagnosis and product selection by the patient's physician, modify prescribed drug dosages, dosage forms, and dosage schedules, and to order laboratory tests pursuant to a drug therapy management agreement that is physician, pharmacist, patient, and disease specific under the following conditions:

(1) The North Carolina Medical Board and the North Carolina Board of Pharmacy have adopted rules developed by a joint subcommittee governing the approval of individual clinical pharmacist practitioners to practice drug therapy management with such limitations that the Boards determine to be in the best interest of patient health and safety.

- (2) The clinical pharmacist practitioner has current approval from both Boards.
- (3) The North Carolina Medical Board has assigned an identification number to the clinical pharmacist practitioner which is shown on written prescriptions written by the clinical pharmacist practitioner.
- (4) The drug therapy management agreement prohibits the substitution of a chemically dissimilar drug product by the pharmacist for the product prescribed by the physician without the explicit consent of the physician and includes a policy for periodic review by the physician of the drugs modified pursuant to the agreement or changed with the consent of the physician.

(c) Clinical pharmacist practitioners in hospitals and other health facilities that have an established pharmacy and therapeutics committee or similar group that determines the prescription drug formulary or other list of drugs to be utilized in the facility and determines procedures to be followed when considering a drug for inclusion on the formulary and procedures to acquire a nonformulary drug for a patient may order medications and tests under the following conditions:

- (1) The North Carolina Medical Board and the North Carolina Board of Pharmacy have adopted rules governing the approval of individual clinical pharmacist practitioners to order medications and tests with such limitations as the Boards determine to be in the best interest of patient health and safety.
- (2) The clinical pharmacist practitioner has current approval from both Boards.
- (3) The supervising physician has provided to the clinical pharmacist practitioner written instructions for ordering, changing, or substituting drugs, or ordering tests with provision for review of the order by the physician within a reasonable time, as determined by the Boards, after the medication or tests are ordered.
- (4) The hospital or health facility has adopted a written policy, approved by the medical staff after consultation with nursing administrators, concerning the ordering of medications and tests, including procedures for verification of the clinical pharmacist practitioner's orders by nurses and other facility employees and such other procedures that are in the best interest of patient health and safety.
- (5) Any drug therapy order written by a clinical pharmacist practitioner or order for medications or tests shall be deemed to have been authorized by the physician approved by the Boards as the supervisor of the clinical pharmacist practitioner and the supervising physician shall be responsible for authorizing the prescription order.

(d) Any registered nurse or licensed practical nurse who receives a drug therapy order from a clinical pharmacist practitioner for medications or tests is authorized to perform that order in the same manner as if the order was received from a licensed physician."

Section 4. G.S. 90-85.3 is amended by adding a new subsection to read:

"(b1) 'Clinical pharmacist practitioner' means a licensed pharmacist who meets the guidelines and criteria for such title established by the joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and is authorized to enter into drug therapy management agreements with physicians in accordance with the provisions of G.S. 90-18.3."

Section 5. G.S. 90-85.3(r) reads as rewritten:

"(r) 'Practice of pharmacy' means the responsibility for: interpreting and evaluating drug orders, including prescription orders; compounding, dispensing and labeling prescription drugs and devices; properly and safely storing drugs and devices; maintaining proper records; and controlling pharmacy goods and services. A pharmacist may advise and educate patients and health care providers concerning therapeutic values, content, uses and significant problems of drugs and devices; assess, record and report adverse drug and device reactions; take and record patient histories relating to drug and device therapy; monitor, record and report drug therapy and device usage; perform drug utilization reviews; and participate in drug and drug source selection and device and device source selection as provided in G.S. 90-85.27 through G.S. 90-85.31. A pharmacist who has received special training may be authorized and permitted to administer drugs pursuant to a specific prescription order in accordance with rules ~~and regulations~~ adopted by each of the Boards of Pharmacy, the Board of Nursing, and the North Carolina Medical Board. ~~Such The rules and regulations~~ shall be designed to ensure the safety and health of the patients for whom such drugs are administered. An approved clinical pharmacist practitioner may collaborate with physicians in determining the appropriate health care for a patient, subject to the provisions of G.S. 90-18.3."

Section 6. Article 4A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-85.26A. Clinical pharmacist practitioners subcommittee."

The North Carolina Board of Pharmacy shall appoint and maintain a subcommittee of the Board consisting of four licensed pharmacists to work jointly with the subcommittee of the North Carolina Medical Board to develop rules to govern the provision of drug therapy management by clinical pharmacist practitioners and to determine reasonable fees to accompany an application for approval or renewal of such approval as provided in G.S. 90-6. The rules developed by this subcommittee shall govern the performance of acts by clinical pharmacist practitioners and shall become effective when they have been adopted by both Boards."

Section 7. Sections 2 through 5 of this act become effective July 1, 2000. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 5th day of July, 1999.

Became law upon approval of the Governor at 10:00 p.m. on the 14th day of July, 1999.

S.B. 160

SESSION LAW 1999-291

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF NURSING TO ESTABLISH PROGRAMS TO AID THE REHABILITATION AND MONITORING OF NURSES WHO EXPERIENCE CERTAIN ADDICTIONS AND DISABILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.23(b) is amended by adding a new subdivision to read:

"(18) Establish programs for aiding in the recovery and rehabilitation of nurses who experience chemical addiction or abuse or mental or physical disabilities and programs for monitoring such nurses for safe practice."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 1999.

Became law upon approval of the Governor at 10:03 p.m. on the 14th day of July, 1999.

S.B. 793

SESSION LAW 1999-292

AN ACT AMENDING THE PSYCHOLOGY PRACTICE ACT TO INCLUDE WITHIN THE SCOPE OF PRACTICE THE DIAGNOSIS AND TREATMENT OF NEUROPSYCHOLOGICAL ASPECTS OF PHYSICAL ILLNESS, ACCIDENT, INJURY, OR DISABILITY AND TO DEFINE THE TERM NEUROPSYCHOLOGICAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-270.2 is rewritten to add the following new subsection to read:

"(7a) Neuropsychological. -- Pertaining to the study of brain-behavior relationships, including the diagnosis, including etiology and prognosis, and treatment of the emotional, behavioral, and cognitive effects of cerebral dysfunction through psychological and behavioral techniques and methods."

Section 2. G.S. 90-270.2(8) reads as rewritten:

"(8) Practice of psychology. -- The observation, description, evaluation, interpretation, or modification of human

behavior by the application of psychological principles, methods, and procedures for the purpose of preventing or eliminating symptomatic, maladaptive, or undesired behavior or of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health, or mental health. The practice of psychology includes, but is not limited to: psychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis diagnosis, including etiology and prognosis, and treatment of mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct, as well as of the psychological and neuropsychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation. Psychological services may be rendered to individuals, families, groups, and the public. The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 6th day of July, 1999.

Became law upon approval of the Governor at 10:07 p.m. on the 14th day of July, 1999.

H.B. 302

SESSION LAW 1999-293

AN ACT TO AMEND THE GENERAL STATUTES PERTAINING TO CHILD SUPPORT ENFORCEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-132(a), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(a) In lieu of or in conclusion of any legal proceeding instituted to establish paternity, the written acknowledgment of paternity executed by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child shall constitute an admission of paternity, paternity and shall have the same legal effect as a judgment of paternity for the purpose of establishing a child support obligation, subject to the right of either signatory to rescind within the earlier of:

- (1) 60 days of the date the document is executed, or
- (2) The date of entry of an order establishing paternity or an order for the payment of child support.

In order to rescind, a challenger must request the district court to order the rescision and to include in the order specific findings of fact that the request for rescision was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the child support enforcement agency, if appropriate, have been served in accordance with Rule 4 of the North Carolina Rules of Civil Procedure. In the event the court orders rescision and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of rescision to the State Registrar of Vital Statistics. Upon receipt of an order of rescision, the State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

A written agreement to support the child by periodic payments, which may include provision for reimbursement for medical expenses incident to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged as provided herein, filed with, and approved by a judge of the district court at any time, shall have the same force and effect as an order of support entered by that court, and shall be enforceable and subject to modification in the same manner as is provided by law for orders of the court in such cases. The written affirmation shall contain the social security number of the person executing the affirmation, and the written acknowledgment shall contain the social security number of the person executing the acknowledgment. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affirmations, acknowledgments and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. The child support enforcement agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an acknowledgement of paternity, and of any alternatives to the execution of an acknowledgment or affirmation of paternity. The mother shall not be excused from making the affirmation on the grounds that it may tend to disgrace or incriminate her; nor shall she thereafter be prosecuted for any criminal act

involved in the conception of the child as to whose paternity she makes affirmation."

Section 2. G.S. 110-142.2(b), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(b) Upon finding that the individual has willfully failed to comply with the child support order or with a subpoena issued pursuant to child support proceedings, and that the obligor is at least 90 days in arrears, or upon a finding that an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings has failed to comply with the subpoena, the court may enter an order instituting the sanctions as provided in subsection (a) of this section. If an individual is adjudicated to be in civil or criminal contempt for a third or subsequent time for failure to comply with a child support order, the court shall enter an order instituting any one or more of the sanctions, if applicable, as provided in subsection (a) of this section. The court may stay the effectiveness of the sanctions upon conditions requiring the obligor to make full payment of the delinquency over time. Any court-ordered payment plan under this subsection shall require the individual to extinguish the delinquency within a reasonable period of time. In determining the amount to be applied to the delinquency, the court shall consider the amount of the debt and the individual's financial ability to pay. The payment shall not exceed the limits under G.S. 110-136.6(b). The individual shall make an immediate initial payment representing at least five percent (5%) of the total delinquency or five hundred dollars (\$500.00), whichever is less. Any ~~such~~ stay of an order under this subsection shall also be conditioned upon the obligor's maintenance of current child support. The court may stay the effectiveness of the sanctions against an individual subject to a subpoena issued pursuant to child support or paternity establishment proceedings upon a finding that the individual has complied with or is no longer subject to the subpoena. Upon entry of an order pursuant to this section that is not stayed, the individual shall surrender any licenses revoked by the court's order to the child support enforcement agency and the agency shall forward a report to the appropriate licensing authority within 30 days of the order."

Section 3. G.S. 50-13.4(c) reads as rewritten:

"(c) Payments ordered for the support of a minor child shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case. Payments ordered for the support of a minor child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

The court shall determine the amount of child support payments by applying the presumptive guidelines established pursuant to subsection

(c1). However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the court orders an amount other than the amount determined by application of the presumptive guidelines, the court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

- (1) If the child is otherwise emancipated, payments shall terminate at that time;
- (2) If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation.

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20."

Section 4. G.S. 50-13.4(d) reads as rewritten:

"(d) In non-IV-D cases, payments for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper person, agency, organization or institution, or to the ~~court~~, State Child Support Collection and Disbursement Unit, for the benefit of the child. In IV-D cases, payments for the support of a minor child shall be ordered to be paid to the ~~court or other proper State agency~~ State Child Support Collection and Disbursement Unit for the benefit of the child."

Section 5. G.S. 52C-5-501(a), as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"(a) An income-withholding order issued in another state may be sent to the person or entity defined or identified as the obligor's employer under the income-withholding provisions of Chapter 50 or Chapter 110 of the General Statutes, as applicable, without first filing a petition or comparable pleading or registering the order with a tribunal of this State. In the event that an obligor is receiving unemployment compensation benefits from the North Carolina Employment Security Commission, in accordance with G.S. 96-17, an income-withholding order issued in another state may be sent to the

Employment Security Commission without first filing a petition or comparable pleading or registering the order with a tribunal of this State. Upon receipt of the order, the employer or the Employment Security Commission shall:

- (1) Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this State;
- (2) Immediately provide a copy of the order to the obligor; and
- (3) Distribute the funds as directed in the withholding order. The Employment Security Commission shall not withhold an amount to exceed twenty-five percent (25%) of the unemployment compensation benefits."

Section 6. G.S. 110-136.2(f) reads as rewritten:

"(f) In the absence of a voluntary assignment of unemployment compensation benefits, the Department of Health and Human Services shall implement income withholding as provided in this Article for IV-D cases. The amount withheld shall not exceed twenty-five percent (25%) of the unemployment compensation benefits. Notice of the requirement to withhold shall be served upon the Employment Security Commission and payment shall be made by the Employment Security Commission directly to the Department of Health and Human Services pursuant to G.S. ~~96-17~~, 96-17 or to another state under G.S. 52C-5-501. Except for the requirement to withhold from unemployment compensation benefits and the forwarding of withheld funds to the Department of Health and Human ~~Services~~, Services or to another state under G.S. 52C-5-501, the Employment Security Commission is exempt from the provisions of G.S. 110-136.8."

Section 7. Article 9 of Chapter 110 of the General Statutes is amended by adding a new section to read:

"§ 110-139.3. High-volume, automated administrative enforcement in interstate cases (AEI).

Upon request of another state, the Department of Health and Human Services shall use automated data processing to search State databases and determine if information is available regarding a parent who owes a child support obligation and shall seize identified assets using the same techniques as used in intrastate cases. Any request by another state to enforce support orders shall certify the amount of each obligor's debt and that appropriate due process requirements have been met by the requesting state with respect to each obligor. The Department of Health and Human Services shall likewise transmit to other states requests for assistance in enforcing support orders through high-volume, automated administrative enforcement where appropriate."

Section 8. G.S. 108A-69, as amended by Section 1 of S.L. 1998-17, reads as rewritten:

"§ 108A-69. Employer obligations.

- (a) As used in this section and in G.S. 108A-70:

- (1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes; or a plan provided by another benefit arrangement. 'Health benefit plan' does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).
- (2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of Chapter 58 of the General Statutes, including a multiple employee welfare arrangement, and any corporation subject to Articles 65 and 67 of Chapter 58 of the General Statutes; ~~and means~~ a group health plan, as defined in Section 607(1) of the Employee Retirement Income Security Act of ~~1974~~, 1974; and the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes.

(b) If a parent is required by a court or administrative order to provide health benefit plan coverage for a child, and the parent is eligible for family health benefit plan coverage through an ~~employer doing business in this State~~, employer, the employer:

- (1) Must allow the parent to enroll, under family coverage, the child if the child would be otherwise eligible for coverage without regard to any enrollment season restrictions.
- (2) Must enroll the child under family coverage upon application of the child's other parent or upon receipt of notice from the Department of Health and Human Services in connection with its administration of the Medical Assistance or Child Support Enforcement Program if the parent is enrolled but fails to make application to obtain coverage for the child.
- (3) May not disenroll or eliminate coverage of the child unless:
 - a. The employer is provided satisfactory written evidence that:
 1. The court or administrative order is no longer in effect; or
 2. The child is or will be enrolled in comparable health benefit plan coverage that will take effect not later than the effective date of disenrollment; or
 - b. The employer has eliminated family health benefit plan coverage for all of its employees.

- (4) Must withhold from the employee's compensation the employee's share, if any, of premiums for health benefit plan coverage, not to exceed the maximum amount permitted to be withheld under section 303(b) of the federal Consumer Credit Protection Act, as amended; and must pay this amount to the health insurer; subject to regulations, if any, adopted by the Secretary of the U.S. Department of Health and Human Services."

Section 9. G.S. 58-51-115(a) reads as rewritten:

"(a) As used in this section and in G.S. 58-51-120 and G.S. 58-51-125:

- (1) 'Health benefit plan' means any accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes; or a plan provided by another benefit arrangement. 'Health benefit plan' does not mean a Medicare supplement policy as defined in G.S. 58-54-1(5).
- (2) 'Health insurer' means any health insurance company subject to Articles 1 through 63 of this Chapter, including a multiple employer welfare arrangement, and any corporation subject to Articles 65 and 67 of this Chapter; ~~and means~~ a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of ~~1974~~, 1974; and the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes."

Section 10. G.S. 15A-1344.1(a) reads as rewritten:

"(a) When the court requires, as a condition of supervised or unsupervised probation, that a defendant support his children, the court may order at any time that support payments be made to the clerk of court for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) ~~shall~~ apply. If child support is to be paid through income withholding, the payments shall be made in accordance with G.S. 110-139(f)."

Section 11. G.S. 50-13.9(a) reads as rewritten:

"(a) Upon its own motion or upon motion of either party, the court may order at any time that support payments be made to the ~~clerk of court~~ State Child Support Collection and Disbursement Unit for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the

immediate income withholding provisions of G.S. 110-136.5(c1) ~~shall~~ apply."

Section 12. G.S. 50-13.9(b) reads as rewritten:

"(b) After entry of ~~such~~ an order by the ~~court~~, court under subsection (a) of this section, the clerk of superior court State Child Support Collection and Disbursement Unit shall transmit child support payments that are made to the clerk in IV-D cases to the Department of Health and Human Services for appropriate distribution. In all other cases, the clerk shall transmit the payments it to the custodial parent or other party entitled to receive them, unless a court order requires otherwise."

Section 13. G.S. 50-13.9(b2) reads as rewritten:

"(b2) In a non-IV-D case:

- (1) The clerk of court shall have the responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate. The State Child Support Collection and Disbursement Unit shall notify the clerk of court of all payments made in non-IV-D cases so that the clerk of court can initiate enforcement proceedings as provided in subsection (d) of this section.
- (2) The clerk of court shall maintain all official records in the case.
- (3) The clerk of court shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received."

Section 14. G.S. 50-13.9(d) reads as rewritten:

"(d) In a non-IV-D case, when the clerk of superior court is notified by the State Child Support Collection and Disbursement Unit that an obligor fails has failed to make a required payment of child support and is in arrears, the clerk of superior court shall mail by regular mail to the last known address of the obligor a notice of delinquency. The notice shall set out the amount of child support currently due and shall demand immediate payment of ~~said~~ that amount. The notice shall also state that failure to make immediate payment will result in the issuance by the court of an enforcement order requiring the obligor to appear before a district court judge and show cause why the support obligation should not be enforced by income withholding, contempt of court, revocation of licensing privileges, or other appropriate means. Failure to receive the delinquency notice ~~shall is not be~~ a defense in any subsequent proceeding. Sending the notice of delinquency ~~shall be~~ is in the discretion of the clerk if the clerk has, during the previous 12 months, sent a notice or notices of delinquency to the obligor for nonpayment,

or if income withholding has been implemented against the obligor or the obligor has been previously found in contempt for nonpayment under the same child support order.

If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or without waiting the 21 days if the clerk has elected not to mail a delinquency notice for any of the reasons provided ~~herein~~, in this subsection, the clerk shall cause an enforcement order to be issued and shall issue a notice of hearing before a district court judge. The enforcement order shall order the obligor to appear and show cause why ~~he~~ the obligor should not be subjected to income withholding or adjudged in contempt of court, or both, and shall order the obligor to bring to the hearing records and information relating to ~~his~~ the obligor's employment, ~~his~~ the obligor's licensing privileges, and the amount and sources of ~~his~~ the obligor's disposable income. The enforcement order shall state:

- (1) That the obligor is under a court order to provide child support, the name of each child for whose benefit support is due, and information sufficient to identify the order;
- (2) That the obligor is delinquent and the amount of overdue support;
- (2a) That the court may order the revocation of some or all of the obligor's licensing privileges if the obligor is delinquent in an amount equal to the support due for one month;
- (3) That the court may order income withholding if the obligor is delinquent in an amount equal to the support due for one month;
- (4) That income withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10;
- (5) That failure to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income will be grounds for contempt;
- (6) That if income withholding is not an available or appropriate remedy, the court may determine whether the obligor is in contempt or whether any other enforcement remedy is appropriate.

The enforcement order may be signed by the clerk or a district court judge, and shall be served on the obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. The clerk shall also notify the party to whom support is owed of the pending hearing. The clerk may withdraw the order to the supporting party upon receipt of the delinquent payment. On motion of the person to whom support is owed, with the approval of the district court judge, if the district court judge finds it is in the best interest of the child, no enforcement order shall be issued.

When the matter comes before the court, the court shall proceed as in the case of a motion for income withholding under G.S. 110-136.5. If income withholding is not an available or adequate remedy, the court may proceed with contempt, imposition of a lien, or other available, appropriate enforcement remedies.

This subsection shall apply only to non-IV-D cases, except that the clerk shall issue an enforcement order in a IV-D case when requested to do so by an IV-D obligee."

Section 15. G.S. 50-13.10(e) reads as rewritten:

"(e) When a child support payment ~~which that~~ is to be made to a ~~clerk of superior court~~ the State Child Support Collection and Disbursement Unit is not received by ~~the clerk~~ the Unit when due, the payment is not a past due child support payment for purposes of this section, and no arrearage accrues, if the payment is actually made to and received on time by the party entitled to receive it and ~~such that~~ receipt is evidenced by a canceled check, money order, or contemporaneously executed and dated written receipt. Nothing in this section shall affect the duties of the clerks ~~or the IV-D agency~~ under this Chapter or Chapter 110 of the General Statutes with respect to payments not received by ~~them~~ the Unit on time, but the court, in any action to enforce such a payment, may enter an order directing the clerk ~~or the IV-D agency~~ to enter the payment on ~~his~~ the clerk's or IV-D agency's records as having been made on time, if the court finds that the payment was in fact received by the party entitled to receive it as provided in this subsection."

Section 16. G.S. 110-36.3 is amended by adding a new subsection to read:

"(d1) Employment Verifications. -- For the purpose of establishing or modifying a child support order, the amount of the obligor's gross income may be established by a written statement signed by the obligor's employer or the employer's designee or an Employee Verification form produced by the Automated Collections Tracking System that has been completed and signed by the obligor's employer or the employer's designee. A written statement signed by the employer of the obligor or the employer's designee that sets forth an obligor's gross income, as well as an Employee Verification form signed by the obligor's employer or the employer's designee, shall be admissible evidence in any action establishing or modifying a child support order."

Section 17. G.S. 110-136(d) reads as rewritten:

"(d) Upon receipt of an order of garnishment, the garnishee shall transmit without delay to the ~~clerk of superior court~~ State Child Support Collection and Disbursement Unit the amount ordered by the court to be garnished. These funds shall be disbursed to the party designated by the court which in those cases of dependent children receiving public assistance shall be the North Carolina Department of Health and Human Services."

Section 18. G.S. 110-136.5(b) reads as rewritten:

"(b) Withholding Based on Obligor's Request. The obligor may request at any time that income withholding be implemented. The request may be made either verbally in open court or by written request.

- (1) A written request for withholding shall state:
 - a. That the obligor is under a court order to provide child support, and information sufficient to identify the order;
 - b. Whether the obligor is delinquent and the amount of any overdue support;
 - c. The name of each child for whose benefit support is payable;
 - d. The name, location, and mailing address of the payor or payors from whom the obligor receives disposable income and the amount of the obligor's monthly disposable income from each payor;
 - e. That the obligor understands that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10; and
 - f. That the obligor understands that the amount withheld will include an amount sufficient to pay current child support, an additional amount toward liquidation of any arrearages, and a two dollar (\$2.00) processing fee to be retained by the employer for each withholding, but that the total amount withheld may not exceed the following percent of disposable income:
 1. Forty percent (40%) if there is only one order for withholding;
 2. Forty-five percent (45%) if there is more than one order for withholding and the obligor is supporting other dependent children or his or her spouse; or
 3. Fifty percent (50%) if there is more than one order for withholding and the obligor is not supporting other dependent children or a spouse.
- (2) A written request for withholding shall be filed in the office of the clerk of superior court ~~to which the obligor is directed to make child support payments, of~~ the court that entered the order for child support. If the request states and the clerk verifies that the obligor is not delinquent, the court may enter an order for withholding without further notice or hearing. If the request states or the clerk finds that the obligor is delinquent, the matter shall be scheduled for hearing unless the obligor in writing waives his right to a

hearing and consents to the entry of an order for withholding of an amount the court determines to be appropriate. The court may require a hearing in any case. Notice of any hearing under this subdivision shall be sent to the obligee."

Section 19. G.S. 110-136.8(b), as amended by Section 1 of S.L. 1998-17 and Section 7 of S.L. 1998-176, reads as rewritten:

"(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

- (1) Withhold from the obligor's disposable income and, within 7 business days of the date the obligor is paid, send to the ~~clerk of superior court or State collection and disbursement unit, as specified in the notice,~~ State Child Support Collection and Disbursement Unit the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either:
 - a. ~~compute~~ Compute, and send the appropriate amount to the ~~clerk of court,~~ State Child Support Collection and Disbursement Unit, using the percentages as provided in G.S. ~~110-136.6, 110-136.6;~~ or (b)
 - b. ~~request~~ Request the initiating party to inform the payor of the proper amount to be withheld for that period;
- (2) Continue withholding until further notice from the IV-D agency, the clerk of superior court, or the ~~State collection and disbursement unit;~~ Child Support Collection and Disbursement Unit;
- (3) ~~Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;~~
- (4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;
- (5) Promptly notify the obligee in a IV-D case, or the clerk of superior court or the ~~State collection and disbursement unit~~ Child Support Collection and Disbursement Unit in a non-IV-D case, in writing:
 - a. If there are one or more orders of child support withholding for the obligor;
 - al. If there are one or more orders of alimony or postseparation support withholding for the obligor;

- b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;
 - c. Of the payor's inability to comply with the withholding for any reason; and
- (6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

Section 20. G.S. 110-136.8(d) reads as rewritten:

"(d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to ~~each clerk of superior court~~ the State Child Support Collection and Disbursement Unit if the payor separately identifies by name and case number the portion of the single payment attributable to each individual obligor and the date that each payment was withheld from the obligor's disposable income."

Section 21. G.S. 110-136.9 reads as rewritten:

"§ 110-136.9. *Payment of withheld funds.*

In ~~IV-D~~ all cases, when required by federal or State law or regulations or by court order, the clerk of superior court shall transmit payments received from payors to the Department of Health and Human Services for appropriate distribution. In all other cases, unless a court order requires otherwise, the clerk of superior court shall transmit the payments to the custodial parent. the State Child Support Collection and Disbursement Unit shall distribute payments received from payors to the appropriate recipient."

Section 22. G.S. 110-139(f) reads as rewritten:

"(f) There is established the State Child Support Collection and Disbursement Unit. The duties of the Unit shall be the collection and disbursement of payments under support orders for:

- (1) ~~All IV-D cases, and~~
- (2) ~~All non-IV-D cases in which the support order was initially issued in this State on or after January 1, 1994, and in which the income of the noncustodial parent is subject to income withholding.~~

for all cases. The Department may administer and operate the Unit or may contract with another State or private entity for the administration and operation of the Unit."

Section 23. G.S. 15A-1344.1 reads as rewritten:

"§ 15A-1344.1. Procedure to insure payment of child support.

(a) When the court requires, as a condition of supervised or unsupervised probation, that a defendant support his children, the court may order at any time that support payments be made to the ~~clerk of court~~ State Child Support Collection and Disbursement Unit for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) ~~shall~~ apply.

(b) After entry of such an order by the court, the clerk of court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(c) The parties affected by the order shall inform the clerk of court and the State Child Support Collection and Disbursement Unit of any change of address or of other condition that may affect the administration of the order. The court may provide in the order that a defendant failing to inform the court and the State Child Support Collection and Disbursement Unit of a change of address within reasonable period of time may be held in violation of probation.

(d) When a defendant in a non-IV-D case, as defined in G.S. 110-129, fails to make required payments of child support and is in arrears, upon notification by the State Child Support Collection and Disbursement Unit the clerk of superior court may mail by regular mail to the last known address of the defendant a notice of delinquency ~~which shall set that sets out the amount of child support currently due and which shall demand that demands immediate payment of said the amount.~~ Failure to receive the delinquency notice ~~shall is not be~~ a defense in any probation violation hearing or other proceeding thereafter. If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or is not paid within 30 days after the defendant becomes delinquent if the clerk has elected not to send a delinquency notice, the clerk shall certify the amount due to the district attorney and probation officer, who shall initiate proceedings for revocation of probation pursuant to Article 82 of Chapter 15A or make a motion in the criminal case for income withholding pursuant to G.S. 110-136.5 or both.

When a defendant in a IV-D case, as defined in G.S. 110-129, fails to make required payments of child support and is in arrears, at the request of the IV-D obligee the clerk shall certify the amount due to the district attorney and probation officer, who shall initiate proceedings for revocation of probation pursuant to Article 82 of Chapter 15A or make a motion in the criminal case for income withholding pursuant to G.S. 110-136.5 or both."

Section 24. This act becomes effective October 1, 1999. The mandatory sanctions under G.S. 110-142.2(b), as amended by this act, apply when an obligor is adjudicated to be in civil or criminal contempt for a third or subsequent time after this act becomes effective.

In the General Assembly read three times and ratified this the 6th day of July, 1999.

Became law upon approval of the Governor at 10:10 p.m. on the 14th day of July, 1999.

S.B. 594

SESSION LAW 1999-294

AN ACT TO CLARIFY THE LAWS ON TITLE INSURANCE
RATE MAKING, COMMERCIAL GENERAL LIABILITY

POLICY EXTENDED REPORTING, AND INSURANCE FRAUD; TO MAKE A TECHNICAL CORRECTION IN THE LITTERING LAW; TO PROVIDE FOR UNIFORM APPLICATION OF NEW LAWS TO HEALTH BENEFIT PLANS; TO AMEND THE LAW GOVERNING CEASE AND DESIST ORDERS FOR UNAUTHORIZED INSURERS; TO ALLOW LICENSING OF A FOREIGN OR ALIEN INSURER TO BE DELAYED UNDER CERTAIN CIRCUMSTANCES; TO AMEND THE LAW GOVERNING AN INSURER'S ACKNOWLEDGMENT OF A CLAIM; TO PROVIDE THAT POLICIES WRITTEN BY SURETY BONDSMEN ARE SUBJECT TO THE LAW GOVERNING THE USE OF DEPOSITS FOR UNPAID LIABILITIES; TO DELAY THE EFFECTIVE DATE FOR THE REGULATION OF THIRD-PARTY ADMINISTRATORS FOR SELF-INSURED WORKERS' COMPENSATION; TO AMEND THE LAW ON COVERAGE FOR NONFORMULARY DRUGS; AND TO MAKE VARIOUS TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-41-10(a) reads as rewritten:

"(a) Except as otherwise provided, this Article applies to all kinds of insurance authorized by G.S. 58-7-15(4) through (14) and G.S. 58-7-15(18) through (22), and to all insurance companies licensed by the Commissioner to write those kinds of insurance. This Article does not apply to insurance written under Articles 21, 26, 36, 37, 45 or 46 of this Chapter; insurance written for residential risks in conjunction with insurance written under Article 36 of this Chapter; to marine insurance as defined in G.S. 58-40-15(3); to personal inland marine insurance; to aviation insurance; to policies issued in this State covering risks with multistate locations, except with respect to coverages applicable to locations within this State; to any town or county farmers mutual fire insurance association restricting its operations to not more than six adjacent counties in this State; nor to domestic insurance companies, associations, orders, or fraternal benefit societies doing business in this State on the assessment plan."

Section 2. G.S. 58-40-140(a) reads as rewritten:

"(a) Any policy for commercial general liability coverage or professional liability insurance wherein the insurer offers, and the insured elects to purchase, an extended reporting period for claims arising during the expiring policy period must provide:

- (1) That in the event of a cancellation permitted by G.S. 58-41-15 or nonrenewal effective under G.S. 58-41-20, there shall be a 30-day period after the effective date of the cancellation or nonrenewal during which the insured may elect to purchase coverage for the extended reporting period.
- (2) That the limit of liability in the policy aggregate for the extended reporting period shall be one hundred percent

(100%) of the expiring policy ~~aggregate~~, aggregate that was in effect at the inception of the policy.

- (3) Within 45 days after the mailing or delivery of the written request of the insured, the insurer shall mail or deliver the following loss information covering a three-year period:
- a. Aggregate information on total closed claims, including date and description of occurrence, and any paid losses;
 - b. Aggregate information on total open claims, including date and description of occurrence, and amounts of any payments;
 - c. Information on notice of any occurrence, including date and description of occurrence."

Section 3. G.S. 58-2-161(a) reads as rewritten:

"(a) For the purposes of this section:

- (1) ~~'Insurer' includes an entity under Articles 49 and 65 through 67 of this Chapter, the Teachers' and State Employees' Comprehensive Major Medical Plan under Chapter 135 of the General Statutes, and an employer or group of employers that insure its workers' compensation liability under Chapter 97 of the General Statutes.~~ 'Insurer' has the same meaning as in G.S. 58-1-5(3) and also includes:

- a. Any hull insurance and protection and indemnity club operating under Article 20 of this Chapter.
- b. Any surplus lines insurer operating under Article 21 of this Chapter.
- c. Any risk retention group or purchasing group operating under Article 22 of this Chapter.
- d. Any local government risk pool operating under Article 23 of this Chapter.
- e. Any risk-sharing plan operating under Article 42 of this Chapter.
- f. The North Carolina Insurance Underwriting Association operating under Article 45 of this Chapter.
- g. The North Carolina Joint Insurance Underwriting Association operating under Article 46 of this Chapter.
- h. The North Carolina Insurance Guaranty Association operating under Article 48 of this Chapter.
- i. Any multiple employer welfare arrangement operating under Article 49 of this Chapter.
- j. The North Carolina Life and Health Insurance Guaranty Association operating under Article 62 of this Chapter.
- k. Any service corporation operating under Article 65 of this Chapter.
- l. Any health maintenance organization operating under Article 67 of this Chapter.
- m. The Teachers' and State Employees' Comprehensive Major Medical Plan operating under Chapter 135 of the General Statutes.

- n. A group of employers self-insuring their workers' compensation liabilities under Article 47 of this Chapter.
 - o. An employer self-insuring its workers' compensation liabilities under Article 5 of Chapter 97 of the General Statutes.
 - p. The North Carolina Self-Insurance Guaranty Association under Article 4 of Chapter 97 of the General Statutes.
 - q. Any reinsurer licensed or accredited under this Chapter.
- (2) "Statement" includes any application, notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X rays, test result, or other evidence of loss, injury, or expense."

Section 4. G.S. 14-399(f1) reads as rewritten:

"(f1) If a violation of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to G.S. 58-30.4 under G.S. 58-36-65 for a finding of guilt under this section."

Section 5. Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-3-167. Applicability of acts of the General Assembly to health benefit plans.

(a) As used in this section:

- (1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that act provided under federal law or regulation. 'Health benefit plan' does not mean any plan implemented or administered by the North Carolina or United States Department of Health and Human Services, or any successor agency, or its representatives. 'Health benefit plan' does not mean any of the following kinds of insurance:
 - a. Accident.
 - b. Credit.
 - c. Disability income.
 - d. Long-term or nursing home care.
 - e. Medicare supplement.
 - f. Specified disease.
 - g. Dental or vision.
 - h. Coverage issued as a supplement to liability insurance.

- i. Workers' compensation.
- j. Medical payments under automobile or homeowners.
- k. Hospital income or indemnity.
- l. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.
- m. Short-term limited duration health insurance policies as defined in Part 144 of Title 45 of the Code of Federal Regulations.

(2) 'Insurer' includes an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, and a multiple employer welfare arrangement subject to Article 49 of this Chapter.

(b) Whenever a law is enacted by the General Assembly that applies to a health benefit plan, the term 'health benefit plan' shall be defined for purposes of that law as provided in subsection (a) of this section unless that law provides a different definition or otherwise expressly provides that the definition in this section is not applicable.

(c) Whenever a law is enacted by the General Assembly that applies to health benefit plans that are delivered, issued for delivery, or renewed on and after a certain date, the renewal of a health benefit plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan."

Section 6. G.S. 58-28-20 reads as rewritten:

"§ 58-28-20. *Cease and desist orders.*

(a) Whenever the Commissioner, from evidence satisfactory to him, has reasonable grounds to believe that any person is violating or is about to violate G.S. 58-28-5, he may, after notice and opportunity for hearing, reduce his findings to writing and issue and cause to be served upon such person an order to cease and desist from violating G.S. 58-28-5.

(b) Until the expiration of the time allowed under G.S. 58-28-25(a) for filing a petition for review, if no such petition has been duly filed within such time; or if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the Court, the Commissioner may at any time, upon such notice and in such manner as he considers proper, modify or set aside in whole or in part any order issued by him under this section.

(c) After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside, in whole or in part, any order issued by him under this section, whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest requires.

(d) Whenever the Commissioner has evidence that any person has or is violating G.S. 58-28-5, or has or is violating any order or requirement of the Commissioner issued or promulgated by the Commissioner under this Article, and that the interests of policyholders, creditors, or the public may be irreparably harmed by delay, the Commissioner may issue a cease and desist order. Notice of the cease and desist order and notice of hearing shall be delivered by first-class mail."

Section 7. G.S. 58-16-5 is amended by adding a new subdivision to read:

"(8) Satisfies the Commissioner that the operation of the company in this State would not be hazardous to prospective policyholders, creditors, or the general public."

Section 8. G.S. 58-5-63 reads as rewritten:

"§ 58-5-63. Interest; liquidation of deposits for liabilities.

(a) All insurance companies making deposits under this Article are entitled to interest on those deposits, which shall remain in the deposit accounts. The right to interest is subject to a company paying its insurance policy liabilities. If any company fails to pay those liabilities, interest accruing after the failure is payable to the Commissioner for the payment of those liabilities under subsection (b) of this section.

(b) If any company fails to pay its insurance policy liabilities after those liabilities have been established by settlement or final adjudication, the Commissioner may liquidate the amount of the company's deposit and accrued interest specified in subsection (a) of this section that will satisfy the company's policy liabilities and make payment to the person to whom the liability is owed. After payment has been made, the Commissioner may require the company to deposit the amount paid out under this subsection. As used in this section, 'insurance policy' includes a policy written by a surety bondsman under Article 71 of this Chapter."

Section 9. G.S. 58-3-100(c) reads as rewritten:

"(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be made to the claimant or his legal representative advising that the claim is being investigated; or shall be a payment of the claim; or shall be a bona fide written offer of settlement; or shall be a written denial of the claim. A claimant includes an insured, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer."

Section 10. Section 58(b) of S.L. 1998-217 reads as rewritten:

"(b) This section becomes effective January 1, 2000- 2002."

Section 11.(a) Section 2.1 of S.L. 1999-132 is repealed.

Section 11.(b) G.S. 58-30-10(14), as amended by Section 7.3 of S.L. 1999-132, reads as rewritten:

"(14) 'Insurer' means any entity that is or should be licensed under Articles 7, 16, 26, 47, 49, 65, or 67 of this Chapter or under Article 5 of Chapter 97 of the General Statutes. For the purposes of this Article, 'insurer' also includes continuing care retirement ~~centers~~ communities that are or should be licensed under Article 64 of this Chapter."

Section 12.(a) G.S. 58-36-75(b) and G.S. 58-36-75(e) are repealed.

Section 12.(b) G.S. 58-36-75(d) reads as rewritten:

"(d) There shall be no ~~Facility recoupment surcharge under G.S. 58-37-40(f) or~~ Safe Driver Incentive Plan surcharges under G.S. 58-36-65 for accidents occurring when only operating a firefighting, rescue squad, or law enforcement vehicle in accordance with G.S. 20-125(b) and in response to an emergency if the operator of the vehicle at the time of the accident was a paid or volunteer member of any fire department, rescue squad, or any law enforcement agency. This exception does not include an accident occurring after the vehicle ceases to be used in response to the emergency and the emergency ceases to exist."

Section 13. The Codifier of Rules may amend the text of the administrative rules in Title 11 of the North Carolina Administrative Code to reflect the recodification of Chapter 58 of the General Statutes. An amendment pursuant to this section is exempt from Chapter 150B of the General Statutes and review by the Rules Review Commission to the extent that it does not change the substance of the rule.

Section 14.(a) G.S. 58-3-221(c), as enacted by S.L. 1999-178, reads as rewritten:

"(c) As used in this section:

(1) 'Closed formulary' means a list of prescription drugs and devices reimbursed by the insurer that excludes coverage for drugs and devices not listed.

~~(1)~~(2) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. 'Health benefit plan' does not mean any plan implemented or administered by the North Carolina Department of Health and Human Services or the United States Department of Health and Human Services, or any successor agency, or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

- a. Accident.
- b. Credit.
- c. Disability income.
- d. Long-term care or nursing home care.
- e. Medicare supplement.
- f. Specified disease.
- g. Dental or vision.
- h. Coverage issued as a supplement to liability insurance.
- i. Workers' compensation.
- j. Medical payments under automobile or homeowners.
- k. Hospital income or indemnity.
- l. Insurance under which benefits are payable with or without regard to fault and that are statutorily required to be contained in any liability policy or equivalent self-insurance

(2)(3) 'Insurer' means an entity that writes a health benefit plan and that is an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, or a multiple employer welfare arrangement under Article 49 of this Chapter."

Section 14.(b) G.S. 58-3-221, as enacted by S.L. 1999-178, is amended by adding a new subsection to read:

"(d) Nothing in this section requires an insurer to pay for drugs or devices or classes of drugs or devices related to a benefit that is specifically excluded from coverage by the insurer."

Section 15. Sections 1 through 3 and Sections 5 through 9 of this act become effective October 1, 1999. The remaining sections of this act are effective when they become law.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

Became law upon approval of the Governor at 10:15 p.m. on the 14th day of July, 1999.

S.B. 1005

SESSION LAW 1999-295

AN ACT TO ESTABLISH CERTAIN LIMITATIONS REGARDING POTENTIAL LIABILITY OF NORTH CAROLINA'S BUSINESSES ARISING FROM YEAR 2000 PROBLEMS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 35.

"Year 2000 Liability and Damages.

"§ 66-280. Purpose.

The General Assembly finds that maintaining the health and stability of the various business enterprises located in the State is in the public

interest in order to ensure the uninterrupted delivery of goods and services to the State's citizenry. The General Assembly further finds that the Year 2000 problem is a one-time occurrence for which no one person is accountable and, therefore, the business enterprises of the State should not have their ability to continue to deliver goods and services impaired by having to contest lawsuits arising from Year 2000 problems over which such business enterprises and governmental units have no control. This Article is intended to place prudent limitations on the potential liability of the State's business enterprises, while preserving the appropriate right of recovery by persons suffering losses. This Article does not limit enforcement of laws, regulations, or permits by State or local government bodies or agencies.

"§ 66-281. Definitions.

As used in this Article:

- (1) 'Contractual control' means the right to direct the manner in which a party performs those contractual obligations related to the claim for damages.
- (2) 'Person' means any individual, corporation, partnership, association, company, business trust, joint venture, or other legal entity.
- (3) 'Performed with due diligence' means acted with reasonable care in its operations to prevent the occurrence of a Year 2000 problem.
- (4) 'Regulated entity' means any insured financial institution or public utility.
- (5) 'Third party' means, with respect to a person against whom a claim for damages is made based upon a Year 2000 problem, any of the following:
 - a. A person having no affiliate relationship with and not under the contractual control of the person against whom a claim for damages is made based upon a Year 2000 problem.
 - b. A local, State, or federal governmental or quasi-governmental agency or entity.
 - c. A regulated entity.
- (6) 'Year 2000 problem' means any computing, physical, enterprise, or distribution system complication that has occurred or may occur as a result of the change of the year from 1999 to 2000 in any person's technology system, including computer hardware, programs, software, or systems; embedded chip calculations or embedded systems; firmware; microprocessors; or management systems, business processes, or computing applications that govern, utilize, drive, or depend on the Year 2000 processing capability of the person's technology systems. 'Year 2000 problem' includes the common computer programming practice of using a two-digit field to represent a year, resulting in erroneous date calculations; an ambiguous interpretation of the term or field '00'; the failure to

recognize 2000 as a leap year; algorithms that use '99' or '00' to activate another function; or the failure of any other applications, software, or hardware due to their date-sensitive nature.

- (7) 'Year 2000 processing' means the processing, calculating, comparing, sequencing, displaying, storing, transmitting, or receiving of date or date-sensitive data from, into, or between the twentieth and twenty-first centuries, during the years 1999 and 2000, and leap year calculations.

" § 66-282. Liability and damages limited.

(a) Subject to subsection (b) of this section, the following apply in any civil action in which the claim for damages is based upon a Year 2000 problem against a person who has performed with due diligence:

- (1) No person shall be liable to any person who is (i) not in privity of contract with such person, (ii) not a person to whom an express warranty has been extended by such person, or (iii) in the case of a trust, not a beneficiary of a trust administered by such person.
- (2) No person shall be liable for damages caused by a delay or interruption in performance, or in the delivery of goods or services, resulting from or in connection with (i) a Year 2000 problem to the extent such Year 2000 problem was caused by a third party or (ii) a third party's Year 2000 problem.
- (3) No employee, officer, or director shall be liable to any person in his or her capacity as such.
- (4) No person shall be liable for consequential or punitive damages.
- (5) Total damages shall not exceed actual damages that are the direct result of a Year 2000 problem.

(b) This section does not apply to an express warranty against damages resulting from a Year 2000 problem and does not affect the right of recovery for damages in connection with wrongful death or injuries to person or tangible property.

(c) In determining whether a person performed with due diligence under subsection (a) of this section, it is prima facie evidence of due diligence for a regulated entity to comply with the relevant directives of its State or federal regulator.

" § 66-283. Prelitigation mediation.

(a) Mediation. -- Prior to bringing a civil action claiming damages allegedly resulting from a Year 2000 problem, the person with the claim shall initiate mediation pursuant to this section. Prelitigation mediation shall be initiated by filing a request for mediation with the clerk of superior court in a county in which the action may be brought. The Administrative Office of the Courts shall prescribe a request for mediation form. The party filing the request for mediation also shall mail a copy of the request by certified mail, return receipt requested, to each party to the action. The clerk shall provide each party with a list of mediators certified by the Dispute Resolution

Commission. If the parties agree in writing to the selection of a mediator from that list, the clerk shall appoint that mediator selected by the parties. If the parties do not agree on the selection of a mediator, the party filing the request for mediation shall bring the matter to the attention of the clerk, and a mediator shall be appointed by the senior resident superior court judge. The clerk shall notify the mediator and the parties of the appointment of the mediator.

(b) Mediation Procedure. -- Except as otherwise expressly provided in this section, mediation under this section shall be conducted in accordance with the provisions for mediated settlement of civil cases in G.S. 7A-38.1 and G.S. 7A-38.2 and rules and standards adopted pursuant to those sections. The Supreme Court may adopt additional rules and standards to implement this section, including an exemption from the provisions of G.S. 7A-38.1 for cases in which mediation was attempted under this section. Prior to the adoption of rules by the Supreme Court, rules and standards adopted pursuant to G.S. 7A-38.3 shall be applicable to this section to the extent such rules do not conflict with the provisions of this section.

(c) Waiver of Mediation. -- The parties to the dispute may waive the mediation required by this section by informing the mediator of their waiver in writing. No costs shall be assessed to any party if all parties waive mediation prior to the occurrence of an initial mediation meeting.

(c1) If a party to the dispute is entitled to an affirmative defense pursuant to G.S. 1-539.26, that party may refuse to participate in the mediation. If the party agrees to participate in the mediation as provided in this section, that party is not entitled to an affirmative defense pursuant to G.S. 1-539.26 upon the filing of the civil action. If the party refuses to participate in the mediation, the mediator shall immediately prepare a certification as provided in subsection (d) of this section stating that the party refused with good cause to participate in the mediation and has satisfied the requirements of this section.

(d) Certification That Mediation Concluded. -- Immediately upon a waiver of mediation as provided in subsection (c) of this section or upon the conclusion of mediation, the mediator shall prepare a certification stating the date on which the mediation was concluded and the general results of the mediation, including, as applicable, that the parties waived the mediation, that an agreement was reached, that mediation was attempted but an agreement was not reached, or that one or more parties, to be specified in the certification, failed or refused without good cause to attend one or more mediation meetings or otherwise participate in the mediation. The mediator shall file the original of the certification with the clerk and provide a copy to each party. Each party to the mediation has satisfied the requirements of this section upon the filing of the certification, except any party specified in the certification as having failed or refused to attend one or more mediation meetings or otherwise participate.

(e) Dismissal of Civil Action. -- In any civil action asserting a claim for damages allegedly resulting from a Year 2000 problem, the court

shall dismiss the action without prejudice for failure to comply with this section if the moving party asserts in his or her pleading the alleged failure to comply and establishes the alleged failure to comply, unless:

- (1) The action has been certified as a class action;
- (2) The nonmoving party establishes that the moving party was served with a copy of the request for mediation and thereafter declined to participate in a mediated settlement conference;
- (3) The nonmoving party has satisfied the requirements of this section and such is indicated in a mediator's certification issued under subsection (d) of this section;
- (4) The court finds that a mediator improperly failed to issue a certification indicating that the nonmoving party satisfied the requirements of this section; or
- (5) The nonmoving party demonstrates, to the satisfaction of the court, good cause for the failure to comply with this section.

(f) Time Periods Tolled. -- Time periods relating to the filing of a claim or the taking of other action with respect to a claim for damages resulting from a Year 2000 problem, including any applicable statutes of limitations, shall be tolled upon the filing of a request for mediation under this section, until 30 days after the date on which the mediation is concluded as set forth in the mediator's certification, or if the mediator fails to set forth such date, until 30 days after the filing of the certification under subsection (d) of this section."

Section 2. G.S. 66-283(c1), as enacted in Section 1 of this act, is effective only if Senate Bill 1074 becomes law.

Section 3. If Senate Bill 192, 1999 Regular Session, becomes law, then Article 35 of Chapter 66 of the General Statutes, as enacted by this act, is recodified as Article 36 of Chapter 66 of the General Statutes.

Section 4. This act is effective when it becomes law and applies to claims arising on or after that date. This act expires on December 31, 2004.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

Became law upon approval of the Governor at 10:20 p.m. on the 14th day of July, 1999.

S.B. 176

SESSION LAW 1999-296

AN ACT TO AMEND THE LAW RELATING TO THE FORFEITURE OF PROPERTY RIGHTS BY SLAYERS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 31A-4 reads as rewritten:

"§ 31A-4. *Slayer barred from testate or intestate succession and other rights.*

The slayer shall be deemed to have died immediately prior to the death of the decedent and the following rules shall apply:

- (1) The slayer shall not acquire any property or receive any benefit from the estate of the decedent by testate or intestate succession or by common law or statutory right as surviving spouse of the decedent.
- (2) Where the decedent dies intestate as to property which would have passed to the slayer by intestate ~~succession, such property shall pass to others next in succession in accordance with the applicable provision of the Intestate Succession Act,~~ succession and the slayer has living issue who would have been entitled to an interest in the property if the slayer had predeceased the decedent, the property shall be distributed to such issue, per stirpes. If the slayer does not have such issue, then the property shall be distributed as though the slayer had predeceased the decedent.
- (3) Where the decedent dies testate as to property which would have passed to the slayer pursuant to the will, ~~such property shall pass as if the decedent had died intestate with respect thereto, unless otherwise disposed of by the will,~~ the devolution of such property shall be governed by G.S. 31-42(a) notwithstanding the fact the slayer has not actually died before the decedent."

Section 2. This act becomes effective October 1, 1999, and applies to the estates of decedents dying on or after that date.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

Became law upon approval of the Governor at 10:24 p.m. on the 14th day of July, 1999.

S.B. 817

SESSION LAW 1999-297

AN ACT TO PROVIDE AN EXCEPTION TO THE LATE LISTING PENALTY FOR CERTAIN REAL PROPERTY IN COUNTIES THAT HAVE NOT ADOPTED PERMANENT LISTING AND TO PHASE IN PERMANENT LISTING IN ALL COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. It is the intent of the General Assembly to encourage all counties to adopt a permanent property tax listing system in accordance with G.S. 105-303(b). The General Assembly finds that permanent listing is more convenient for taxpayers and more efficient for counties. To encourage counties to adopt permanent listing in the next few years, Section 2 of this act prohibits counties that have not adopted such a system from charging late listing penalties in certain circumstances. Section 3 of this act requires all counties to adopt permanent listing systems by the 2004 tax year.

Section 2. G.S. 105-312(h) reads as rewritten:

"(h) Computation of Penalties. -- Having computed each year's taxes separately as provided in subsection ~~(g), above, (g) of this section,~~ there shall be added a penalty of ten percent (10%) of the amount of the tax for the earliest year in which the property was not listed, plus an additional ten percent (10%) of the same amount for each subsequent listing period that elapsed before the property was discovered. This penalty shall be computed separately for each year in which a failure to list occurred; and the year, the amount of the tax for that year, and the total of penalties for failure to list in that year shall be shown separately on the tax records; but the taxes and penalties for all years in which there was a failure to list shall be then totalled on a single tax receipt. The penalty provided in this section does not apply to real property if there have been no improvements to the property since it was last listed and there has been no change in ownership since it was last listed."

Section 3. Effective for taxes imposed for taxable years beginning on or after July 1, 2004, G.S. 105-303(b) reads as rewritten:

"(b) ~~With the approval of the Department of Revenue, the board of county commissioners may install a permanent listing system. (The Department's approval shall not, however, be required for any such system installed prior to April 3, 1939.)~~ The board of commissioners of each county must install a permanent listing system. Each county must obtain the approval of the Department of Revenue for its permanent listing system. Under such a system the provisions of subdivisions (b)(1) through ~~(b)(4), below, shall (b)(4) of this subsection apply.~~

- (1) The assessor ~~shall be~~ is responsible for listing all real property on the abstracts and tax records each year in the name of the owner of record as of the day as of which property is to be listed under G.S. 105-285.
- (2) Persons whose duty it is to list real property under the provisions of G.S. 105-302 ~~shall be~~ are relieved of that duty, but annually, during the listing period established by G.S. 105-307, ~~such persons shall~~ these persons must furnish the assessor with the information concerning improvements on and separate rights in real property required by G.S. 105-309(c)(3) through (c)(5).
- (3) The penalties imposed by G.S. 105-308 and 105-312 ~~shall not be imposed for~~ do not apply to failure to list real property for taxation, but they ~~shall be imposed for~~ apply to failure to comply with the provisions of subdivision ~~(b)(2), above, (b)(2) of this subsection~~ with respect to reporting the construction or acquisition of improvements on and separate rights in real property. In such a case, the penalty prescribed by G.S. 105-312 shall be computed on the basis of the tax imposed on the improvements and separate rights.

- (4) The Department of Revenue may authorize the board of county commissioners to make additional modifications of the listing requirements of this Subchapter, ~~but no such modification shall conflict with the provisions of~~ as long as the modifications do not conflict with subdivisions (b)(1) through (b)(3), above, (b)(3) of this subsection."

Section 4. Section 3 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2004. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. Section 2 of this act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2004.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

Became law upon approval of the Governor at 10:30 p.m. on the 14th day of July, 1999.

S.B. 852

SESSION LAW 1999-298

AN ACT TO MAKE DEFENDANTS WHO ARE ELIGIBLE FOR A DRUG TREATMENT COURT PROGRAM ELIGIBLE FOR DEFERRED PROSECUTION, AND TO AUTHORIZE PARTICIPATION IN A DRUG TREATMENT COURT PROGRAM AS A SPECIAL CONDITION OF PROBATION FOR CONVICTED DEFENDANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1341 is amended by adding a new subsection to read:

"(a2) Deferred Prosecution for Purpose of Drug Treatment Court Program. -- A defendant eligible for a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes may be placed on probation if the court finds that prosecution has been deferred by the prosecutor, with the approval of the court, pursuant to a written agreement with the defendant, for the purpose of allowing the defendant to participate in and successfully complete the Drug Treatment Court Program."

Section 2. G.S. 15A-1343(b1) is amended by adding a new subdivision to read:

"(2b) Participate in and successfully complete a Drug Treatment Court Program pursuant to Article 62 of Chapter 7A of the General Statutes."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

Became law upon approval of the Governor at 10:35 p.m. on the 14th day of July, 1999.

H.B. 1022

SESSION LAW 1999-299

AN ACT TO PROHIBIT THE UNLAWFUL USE OF A DRIVERS LICENSE, A LEARNER'S PERMIT, OR A SPECIAL IDENTIFICATION CARD ISSUED BY THE DIVISION OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-30 reads as rewritten:

"§ 20-30. *Violations of license or learner's permit provisions.*

It shall be unlawful for any person to commit any of the following acts:

- (1) To display or cause to be displayed or to have in possession a driver's license or learner's permit, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered.
- (2) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a driver's license or learner's permit.
- (3) To display or to represent as one's own a license or learner's permit not issued to the person so displaying same.
- (4) To fail or refuse to surrender to the Division upon demand any driver's license or learner's permit that has been suspended, canceled or revoked as provided by law.
- (5) To use a false or fictitious name or give a false or fictitious address in any application for a driver's license or learner's permit, or any renewal or duplicate thereof, or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application, or for any person to procure, or knowingly permit or allow another to commit any of the foregoing acts. Any license or learner's permit procured as aforesaid shall be void from the issuance thereof, and any moneys paid therefor shall be forfeited to the State.
- (6) To photostat or otherwise reproduce a driver's license or learner's permit or to possess a driver's license or learner's permit which has been photostated or otherwise reproduced, unless such photostat or other reproduction was authorized by the Commissioner.
- (7) To sell or offer for sale any reproduction or facsimile or simulation of a driver's license or learner's permit. The provisions of this subdivision shall not apply to agents or employees of the Division while acting in the course and scope of their employment. Any person, firm or corporation violating the provisions of this subsection shall be guilty of a Class I felony.
- (8) To possess more than one commercial drivers license or to possess a commercial drivers license and a regular drivers

license. Any commercial drivers license other than the one most recently issued is subject to immediate seizure by any law enforcement officer or judicial official. Any regular drivers license possessed at the same time as a commercial drivers license is subject to immediate seizure by any law enforcement officer or judicial official.

- (9) To present, display, or use a drivers license or learner's permit that contains a false or fictitious name in the commission or attempted commission of a felony. Any person violating the provisions of this subdivision shall be guilty of a Class I felony."

Section 2. G.S. 20-37.8 reads as rewritten:

"§ 20-37.8. *Fraudulent use prohibited.*

(a) It shall be unlawful for any person to use a false or fictitious name or give a false or fictitious address in any application for a special identification card or knowingly to make a false statement or knowingly conceal a material fact or otherwise commit a fraud in any such application or to obtain or possess more than one such card for a fraudulent purpose or knowingly to permit or allow another to commit any of the foregoing acts.

(b) It shall be unlawful for any person to present, display, or use a special identification card which contains a false or fictitious name in the commission or attempted commission of a felony.

(c) A violation of subsection (a) of this section shall constitute a Class 2 misdemeanor. A violation of subsection (b) of this section shall constitute a Class I felony."

Section 3. This act becomes effective December 1, 1999.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

Became law upon approval of the Governor at 10:40 p.m. on the 14th day of July, 1999.

S.B. 742

SESSION LAW 1999-300

AN ACT TO MAKE IT UNLAWFUL FOR SCHOOL PERSONNEL TO ENGAGE IN SEXUAL ACTS WITH A STUDENT.

The General Assembly of North Carolina enacts:

Section 1. Article 26 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-202.4. *Taking indecent liberties with a student.*

(a) If a defendant, who is a teacher, school administrator, student teacher, or coach, at any age, or who is other school personnel and is at least four years older than the victim, takes indecent liberties with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student, the defendant is guilty of a Class I felony, unless the conduct is covered under some other provision of law providing for greater punishment. The term "same

school" means a school at which the student is enrolled and the school personnel is employed or volunteers. A person is not guilty of taking indecent liberties with a student if the person is lawfully married to the student.

(b) If a defendant, who is school personnel, other than a teacher, school administrator, student teacher, or coach, and who is less than four years older than the victim, takes indecent liberties with a student as provided in subsection (a) of this section, the defendant is guilty of a Class A1 misdemeanor.

(c) Consent is not a defense to a charge under this section.

(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

- a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or
- b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. 14-27.1.

(2) "School" means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes.

(3) "School personnel" means any person included in the definition contained in G.S. 115C-332(a)(2), and any person who volunteers at a school or a school-sponsored activity.

(4) "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school."

Section 2. G.S. 14-27.7 reads as rewritten:

"§ 14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony. Consent is not a defense to a charge under this section.

(b) If a defendant, who is a teacher, school administrator, student teacher, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a

school at which the student is enrolled and the school personnel is employed or volunteers. A defendant who is school personnel, other than a teacher, school administrator, student teacher, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section. For purposes of this subsection, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d)."

Section 3. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 8:38 a.m. on the 15th day of July,

S.B. 302

SESSION LAW 1999-301

AN ACT TO REGULATE HUNTING IN LEE AND RUTHERFORD COUNTIES AND TO ESTABLISH SEASONS FOR HUNTING FOXES WITH WEAPONS AND WITH TRAPS IN CHOWAN COUNTY AND TO PROHIBIT DEER HUNTING IN MOORE COUNTY WITHOUT THE WRITTEN PERMISSION OF THE LANDOWNER, TO PROHIBIT DEER HUNTING FROM THE RIGHT-OF-WAY OF A PUBLIC ROAD IN MOORE COUNTY, AND TO REQUIRE OWNER IDENTIFICATION ON DOGS USED TO HUNT DEER IN MOORE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful for any person to hunt with a firearm, bow and arrow or crossbow, or other deadly weapon while on the land of another unless the person is a spouse, child, or grandchild of the landowner or has on his person a paper writing dated and signed by the owner or lessee of the land granting the person permission to hunt with a firearm, bow and arrow, crossbow, or other deadly weapon while on the land. If the land is owned by or leased to a club, the permission shall be signed by the club president or other chief executive. If the land is owned by or leased to a corporation, the permission shall be signed by the president or the vice-president of the corporation or the authorized designee of the president or vice-president. Permission shall not be valid for a period of more than one year, but may be valid for any shorter period stated in the permission. The written permission shall be displayed upon request to any law enforcement officer authorized to enforce this section.

Section 2. It is unlawful to hunt, take, or kill with a firearm, bow and arrow, crossbow, or other deadly weapon or to attempt to

hunt, take, or kill with any such weapon any wild animal or wild bird on, from, or across the right-of-way of any public road, street, highway, or thoroughfare.

Section 3. It is unlawful to discharge a firearm from, onto, across, or down the right-of-way of any public road, street, highway, or thoroughfare. This section shall not apply to law enforcement officers who discharge their firearms in the lawful discharge of their duties.

Section 4. Violation of the provisions of Sections 1 through 3 of this act is punishable as a Class 3 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, violation of those sections is punishable by a fine of up to three hundred dollars (\$300.00).

Section 5. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Section 6. Section 5 of Chapter 128 of the 1989 Session Laws reads as rewritten:

"Section 5. This act applies only to Gates ~~County~~ and Chowan Counties."

Section 6.1.(a) It is unlawful to hunt deer on the land of another unless the hunter has, on the hunter's person, a written permission signed and dated by the owner or lessee of the land granting the hunter permission to hunt deer on that land. If the land is owned or leased by a club, the president of the club shall issue the permission to club members to hunt deer. Unless otherwise specified in the writing, the written permission shall be valid for one year from the date of the permission. The written permission shall be displayed upon request to any law enforcement officer with the authority to enforce this section.

Section 6.1.(b) It is unlawful to hunt, take, or kill deer at any time on, from, or across the right-of-way of any public road or highway.

Section 6.1.(c) It is unlawful to hunt deer with the aid of dogs unless each dog bears a collar, tag, or other identification showing its owner's full name and address. It is unlawful for any person other than the dog's owner to remove an identification collar or tracking collar from a dog. The provisions of this section shall not apply to a landowner or the landowner's children while those persons are hunting deer on the landowner's property.

Section 6.1.(d) Violation of this section is a Class 3 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, violation of this section is punishable (i) upon a first conviction by a fine of not less than three hundred dollars (\$300.00) and not more than five hundred dollars (\$500.00), and (ii) upon a second or subsequent conviction by a fine of not less than five hundred dollars (\$500.00) and not more than seven hundred dollars (\$700.00), by imprisonment for up to 60 days, loss of the defendant's North Carolina hunting license, or all three, in the discretion of the court.

Section 6.1.(e) This section is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Section 7. Sections 1 through 5 of this act apply only to Lee County and Rutherford County. Section 6 of this act applies only to Chowan County. Section 6.1 of this act applies only to Moore County.

Section 8. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law on the date it was ratified.

S.B. 523

SESSION LAW 1999-302

AN ACT TO MODIFY THE PURPOSES FOR WHICH THE GREENSBORO ROOM OCCUPANCY TAX MAY BE USED.

The General Assembly of North Carolina enacts:

Section 1. Chapter 22 of the 1991 Session Laws, as amended by Chapter 380 of the 1995 Session Laws, reads as rewritten:

"Section 1. Levy of Tax.

(a) ~~The Greensboro City Council may, by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, may~~ levy a city-wide room occupancy and tourism development tax in addition to any other occupancy tax authorized for Guilford County.

(b) ~~Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the city council in the resolution levying the tax which may in no case be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

"Sec. 2. Occupancy Tax.

The city room occupancy and tourism development tax that may be levied under this act shall be three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourism camp, or other similar place within the City of Greensboro which is subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or occupancy tax.

"Sec. 3. Exemptions.

The tax authorized by this act does not apply to gross receipts derived by the following entities from accommodations furnished by them:

- (1) Religious organizations;
- (2) A business that offers to rent fewer than five units;
- (3) Educational organizations;
- (4) Summer camps; and
- (5) Charitable, benevolent, and other nonprofit organizations.

~~"Sec. 4. Administration of Tax.~~

~~(a) The City of Greensboro may contract with Guilford County to collect and administer a tax levied under this act. The tax is due and payable to the city in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~(b) A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars (\$10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid. The city council may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~(c) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this act or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars (\$1,000), imprisonment not to exceed six months, or both. A tax levied under this section shall be levied, administered, and collected as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this act. The provisions for repeal of the tax as provided in G.S. 160A-215 do not apply to a tax levied under this act.~~

~~"Sec. 5. Collection of Tax.~~

~~Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city or the county shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~"Sec. 6. Disposition of Taxes Collected.~~

~~(a) Until retirement of the debt to finance renovation and expansion of the Greensboro War Memorial Coliseum arena, the proceeds of the occupancy tax shall be used as provided in this subsection.~~

- ~~(1) Promotion funds. -- The city or the county shall remit twenty percent (20%) of the net proceeds of the tax to the~~

Greensboro/Guilford County Tourism Development Authority. ~~'Net proceeds' means gross proceeds less the cost to the city or the county of administering and collecting the tax, not to exceed five percent (5%) of the gross proceeds of the tax.~~ The authority shall use the funds remitted to it under this subsection only ~~for activities and programs promoting and encouraging travel and tourism, to promote travel and tourism and for tourism-related expenditures.~~

- (2) Rent subsidy funds. -- The city may remit up to two hundred thousand dollars (\$200,000) of the remaining net proceeds each fiscal year to the Greensboro/Guilford County Tourism Development Authority for a marketing fund. The marketing fund may be used only for coliseum rent subsidies to attract large groups that commit to fill at least 5,000 room nights for the event. Any part of the marketing fund that has not been spent or committed at the end of each fiscal year for this purpose shall be credited to the City of Greensboro for use in accordance with subdivision (3) of this subsection.

- (3) Complex funds. -- The City of Greensboro shall receive the balance of the net proceeds and shall use these funds only (i) to finance the renovation and expansion of the Greensboro War Memorial Coliseum arena, (ii) to finance the renovation and expansion of the remainder of the Greensboro War Memorial Complex and acquisition of property in the vicinity of the Complex, and (iii) for maintenance of the Complex. In the event that the funds exceed the amount required for these purposes, the excess shall be retained in a special reserve fund and used (i) to make debt payments where additional funds are needed in any payment period or (ii) to call a portion of the debt.

(b) Upon retirement of the full debt to finance the renovation and expansion of the Greensboro War Memorial Coliseum arena, the proceeds of the occupancy tax shall be used as provided in this subsection.

- (1) Promotion funds. -- The city or the county shall remit twenty-five percent (25%) of the net proceeds of the tax to the Greensboro/Guilford County Tourism Development Authority. The authority shall use the funds remitted to it under this subsection only ~~for activities and programs promoting and encouraging travel and tourism, to promote travel and tourism and for tourism-related expenditures.~~

- (2) Rent subsidy funds. -- The city may remit up to two hundred thousand dollars (\$200,000) of the remaining net proceeds each fiscal year to the Greensboro/Guilford County Tourism Development Authority for a marketing fund. The marketing fund may be used only for coliseum rent subsidies to attract large groups that commit to fill at least 5,000 room

nights for the event. Any part of the marketing fund that has not been spent or committed at the end of each fiscal year for this purpose shall be credited to the City of Greensboro for use in accordance with subdivision (3) of this subsection.

- (3) Promotion and facilities funds. -- The city shall receive the balance of the net proceeds and shall use these funds only (i) for specific tourist-related events, programs, and activities, such as arts, recreational, or cultural events, or (ii) for promoting, improving, constructing, financing, or acquiring facilities or attractions that enhance the development of tourism. Before expending the proceeds for any of the purposes listed in this subsection, the city shall submit each project to the Greensboro/Guilford County Tourism Development Authority. The board of directors of that authority shall make recommendations to the city with respect to the projects within 60 days after submission by the city.

(c) The following definitions apply in this section:

- (1) Net proceeds. -- Gross proceeds less the cost to the city or county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars (\$500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.
- (2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.
- (3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

"Sec. 7. Contracts Authorized.

The City of Greensboro may contract with any nonprofit organization to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended. The Greensboro/Guilford County Tourism Development Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended.

"Sec. 8. Reports.

The Greensboro/Guilford County Tourism Development Authority and the City of Greensboro shall report quarterly and at the close of the fiscal year to the city council on their receipts and expenditures for

the preceding quarter and for the year in such detail as the council may require. The Greensboro/Guilford County Tourism Development Authority shall submit its annual budget for the funds provided in this act to the Greensboro City Council for approval prior to adoption by the authority. This action does not, however, incorporate the authority's budget into the annual operating budget of the City of Greensboro. The authority shall furnish its annual audit to the Greensboro City Council.

"Sec. 9. Repeal of Levy.

The Greensboro City Council may, by resolution, repeal the tax levied under this act, but the repeal may not become effective until the debt for the renovation and expansion of the Greensboro War Memorial Coliseum arena has been retired. In addition, the repeal may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."

Section 2. City administrative provisions. -- Section 3 of S.L. 1997-410, as amended by Section 2 of S.L. 1997-447 and Section 4 of S.L. 1998-112, reads as rewritten:

"Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by S.L. 1997-361 and S.L. 1997-364, applies to the Cities of Goldsboro, Greensboro, Lumberton, Mount Airy, Shelby, and Statesville, to the Town of St. Pauls and to the municipalities in Brunswick County."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law on the date it was ratified.

S.B. 532

SESSION LAW 1999-303

AN ACT REWRITING THE LAWS RELATED TO THE CIVIL SERVICE BOARD OF THE CITY OF ASHEVILLE, AND AUTHORIZING BUNCOMBE COUNTY TO CONDUCT AN ADVISORY REFERENDUM ON ZONING.

The General Assembly of North Carolina enacts:

Section 1. Chapter 757 of the 1953 Session Laws, as amended, read as rewritten:

"Section 1. There is hereby established as a part of government of the City of Asheville, ~~a municipal corporation of the State of North Carolina a Department of Civil Service, to be under the general management and control of a Director of Civil Service, acting in cooperation with a Civil Service Board, and having Board which shall have the powers and performing perform~~ the duties specified in this Act with respect to the classified service of the City of Asheville as ~~hereinafter defined.~~ defined in this Act. The City Manager shall

provide for the operational needs of the Civil Service Board in the City's annual budget.

Sec. 2. Section 2. The Civil Service Board shall consist of five (5) members as follows: The Director of Civil Service, and one additional member who shall be chosen by the Council of the City of Asheville at a meeting of said Council, with fifteen (15) days after the ratification of this Act, and shall serve at the pleasure of said Council. Two (2) members, who shall be elected by the members of the classified service of the City, as hereinafter defined, at an election for that purpose, to be called by the City Manager, and held within fifteen (15) days after the naming of the above two members by the Council, and after ten (10) days written notice to each employee of said classified service, said two (2) members to serve for a term of two years and until the election of their successors by the members of said classified service biennially thereafter. Within five (5) days after the election of the two (2) members of the board by the employees of the classified service, the City Manager shall call a meeting of the four members of the board then chosen, at which meeting, or an adjournment thereof, within five days thereafter, said members shall select by a majority vote, a fifth (5th) member of the board. If such member is not so elected, then the City shall choose a fifth (5th) member, of said board. The fifth (5th) member of the board shall serve for a term of two years and until the election of his successor biennially thereafter in the same manner as above provided.

The Civil Service Board shall consist of five members as follows: (i) two members who shall be chosen by the City Council at a meeting of the Council and they shall serve at the pleasure of the Council; (ii) two members who shall be elected by the members of the classified service of the City, as defined in this Act, at an election held for that purpose and on a normal City workday not less than 10 nor more than 30 days after written notice of the date of the election is provided to each member of the classified service; and (iii) one member who shall be selected by majority vote of the four other members already selected or elected at a meeting held within 30 days after the members elected by the classified service have taken office. If a member is not elected by majority vote of the four other members, the City Council shall appoint a member to the Board. All members of the Board shall be eligible for successive terms, in the same manner in which they were initially selected or elected and may serve beyond the end of their respective terms until their successors take office. The chair of the Civil Service Board shall be appointed annually by the City Council, or more often as needed, from among the membership of the Board. The members of the Board shall serve without compensation but may be reimbursed for expenses pursuant to policies adopted by the City.

The City Council shall, by ordinance not inconsistent with this act, establish the procedure for the election of the representatives of the employees in the classified service, and provide for meeting the expense for such elections. The members of the Civil Service Board

must all be qualified voters of the City of Asheville, not employed by the ~~city~~, city or serving on the City Council. In the event of a vacancy on ~~said the~~ Board, such vacancy shall be filled by the body or group, choosing the member, a successor to whom is to be chosen, and in the manner herein provided for the selection of such member.

~~Sec. 3.~~ Section 3. The classified service of the ~~city~~ City shall include all officers and employees of the City of Asheville, except officers elected by the people, the city manager, directors of departments, as defined in the city charter, and members of advisory boards appointed by such directors, the city clerk, ~~the clerk of the police court~~, or any deputy clerk of the City of Asheville, and members of any board or commission appointed by the ~~council~~, Council, and employees of independent boards now choosing their own employees.

~~Sec. 4.~~ Section 4. The Civil Service Board shall make, and may amend, rules for promoting efficiency in the classified service of the ~~city~~, for the appointment, promotion, transfer for the layoff, reinstatement, suspension and removal of employees in the classified service, City as provided in Section 5 of this Act. Such rules and any amendment thereto, shall be submitted to the ~~said council~~ Council for approval, and shall be open to public inspection, when filed with the ~~said council~~ Council for ~~such~~ approval. The ~~city council~~, City Council, after giving members of the classified service and citizens of Asheville an opportunity to be heard at a public hearing, shall act upon such proposed rules and amendments, and such rules or amendments, when approved by a majority vote of the ~~council~~, Council, shall be in full force and effect. The ~~council~~ Council may, before approval, amend the rules or amendments thereto, submitted to it for approval.

~~Sec. 5.~~ Section 5. Such rules, ~~above mentioned~~, as authorized in Section 4 of this Act, among other things, may provide:

- (1) For the standardization and classification of all positions and employments in the classified service of the ~~city~~, City. Such classification into groups and subdivisions shall be based upon and graded according to duties and responsibilities, and so arranged as to promote the filling of the higher grades, so far as practicable, through promotions. The City Manager or his or her designee shall consult representative employees in the Police and Fire Departments to establish criteria to be used to fill each position within those respective departments, including lateral entry positions. If only one representative employee is consulted, he or she shall be a representative chosen by the employees of the respective department. If a group of two or more employees is established for purposes of this subdivision, at least one-half of the employees shall be chosen by the employees of the respective department. The Civil Service Board shall have the authority to approve any criteria established and the criteria shall apply only to

persons promoted or hired after the effective date of the approval. This provision shall not apply to hiring or promotional processes initiated prior to the effective date of this Act.

- ~~(2) For open competitive tests to ascertain the relative fitness of all applicants for appointment in the competitive class.~~
- ~~(3) For public notice of the time and place of all competitive tests, at least: ten days in advance thereof, by publication in the paper of the city having the largest or second largest circulation and in all copies of the issues thereof having the largest circulation in the city, and by posting a notice in conspicuous place in the city hall.~~
- ~~(4) For the creation of eligible lists upon which shall be entered the names of the successful applicants in the order of their standing in the competitive tests, and without reference to the time of the test.~~
- ~~(5) For the rejection of applicants or eligibles who do not satisfy reasonable requirements as to age, sex, physical condition and moral character or who have attempted deception or fraud in connection with any test or their application therefor.~~
- ~~(6) For the certification to the appointing author from the appropriate eligible list, for filling a vacancy in the competitive class, of the three names standing highest in such list.~~
- ~~(7) For temporary employment without test, in the absence of an eligible list; but no such temporary employment shall continue after the establishment of a suitable eligible list nor for more than sixty days.~~
- ~~(8) For temporary employment for transitory work without test, but such employment shall require the consent of the Director of Civil Service in each case, and shall not continue for more than sixty days nor be renewed.~~
- ~~(9) For noncompetitive tests, for appointment to positions designated as requiring peculiar and exceptional qualifications of a scientific, managerial, professional or educational character.~~
- ~~(10) For promotion based on competitive tests and upon records of efficiency, character, conduct and seniority.~~
- ~~(11) For transfer from a position to a similar position in the same class and grade.~~
- ~~(12) For immediate reinstatement at the head of the eligible list of person who, without fault or delinquency on their part, are separated from the service or reduced in rank.~~
- ~~(13) For suspension for purpose of discipline, with or without pay, for not longer than ninety days, and for leave of absence with or without pay.~~
- ~~(14) For discharge or reduction in rank or compensation after the person to be discharged or reduced has, if he so~~

- ~~requests, been presented by the person responsible for his appointment with the reasons therefor specifically stated in writing and has been given an opportunity to be publicly heard in his own defense by the Civil Service Board. The written reasons for such discharge or reduction and any reply in writing thereto by any such officer or employee shall be filed with the Department of Civil Service.~~
- ~~(15) For investigation and keeping a record of the efficiency of officers and employees in the classified service, and for requiring markings and reports relative thereto from appointing authorities.~~
- ~~(2) For temporary or part-time employment to meet the transitory or seasonal needs of the City, except no temporary or part-time employment may occur or continue in violation of applicable State or federal law.~~
- ~~(3) For the establishment of a probationary period for new City employees prior to employees becoming members of the classified service, except no probationary period or any extension thereof may exceed one year in the aggregate.~~
- ~~(4) For suspension for purpose of discipline, with or without pay, for not longer than 90 days.~~
- ~~(5) For discharge or reduction in rank or compensation after the person to be discharged or reduced has, if he or she so requests, been presented by the person responsible for his or her appointment with the reasons therefor specifically stated in writing and has been given an opportunity to be publicly heard in his or her own defense by the Civil Service Board, in accordance with Section 8 of this Act. The written reasons for the discharge or reduction and any reply in writing thereto by any such officer or employee shall be filed with the Department of Civil Service.~~
- ~~(6) For investigation and keeping a record of the efficiency of officers and employees in the classified service, and for requiring markings and reports relative thereto from appointing authorities.~~

~~Sec. 6. There shall be kept in the department of Civil Service an application register in which shall be entered the names and addresses and the order and date of application of all applicants for civil service test and the office or employments which they seek. All applications shall be upon forms prescribed by the department for Civil Service.~~

~~Sec. 7. Tests required by the department of Civil Service shall be practical, shall relate to matters which fairly measure the relative fitness of applicants to discharge the duties of the position which they seek, and shall take account of character, training and experience. No question in any test shall relate to political or religious opinions, affiliations or service, and no appointment, transfer, layoff, promotion, reduction, suspension or removal shall be affected or influenced by such opinions, affiliations or service. Notice of the time, place and scope of each test shall be given by publication and posting as~~

~~specified in Section 5 of this Act, and by mail, at least ten days in advance, to each applicant upon the appropriate lists of the application register.~~

~~Sec. 8. The list of applicants eligible to appointment by reason of civil service tests, which their grades, shall be known as the register of eligibles and shall be open to public inspection. The names of such eligibles shall be arranged in their respective lists in the order of their standing on test. The name of no person shall remain on the register of eligibles for more than two years without a new application, and, if the civil service rules as require, a new test.~~

~~Sec. 9. When any position in the classified service is to be filed, the officer having authority to fill such vacancy shall request of the director of civil service the certification of names of eligibles for appointment to such vacancy and upon receipt of such request the director of civil service shall promptly certify to such officer the names and addresses of the highest three eligibles on the list for the class or grade to which such position belongs, with their respective grades as shown on the register of eligibles. The appointing authority shall appoint to such position one of the persons whose names are so certified.~~

~~Sec. 10. Whenever practicable, vacancies in the classified service shall be filled by promotion, and the civil service rules shall indicate the lines of promotion from each lower to higher grade wherever experience derived in the lower grade tends to qualify for the higher. Any advancement in rank shall constitute promotion. Lists from which promotions are to be made shall be created as provided by the civil service rules, and the appointment of eligibles therefrom shall be made in the same manner as original appointments. When there are less than three names on the promotion list eligible for certification in any instance, then if the City Manager requests it, appointments to higher positions shall be made after competitive tests, in which persons not in the service of the city may compete, as well as applicants for such positions from the lower grades of the service, or from other branches thereof. In such case, appointment shall be made from the highest three eligibles, as in the case of other competitive tests.~~

~~Sec. 11. There shall be maintained in the department of civil service a list of all persons in the classified service showing in connection with each name the position held, the salary or wages paid, the data and character of appointment, and every subsequent change in status. Such list shall be known as the service register and every appointing officer or authority shall promptly transmit to the department of civil service all information requested for the establishment and maintenance of each register.~~

~~Sec. 12. The treasurer shall not pay, nor shall any officer or employee of the city issue a check for the payment of any salary or compensation to any person holding or claiming to hold, a position in the classified service, unless the payroll or account of such salary or compensation shall bear the certificate of the director of civil service~~

~~that the persons named therein have been appointed or employed and are performing service in accordance with the civil service provisions of this Act and the rules established thereunder, that their names appear upon the service register for the time for which such salary or compensation is claimed and that the salary or compensation is at the rate indicated on such register. If the treasurer or any officer or employee shall willfully or negligently violate any of the provisions of this Section, he and the sureties on his bond shall be liable to the City for the amount thereof and action may be brought therefor by an taxpayer for the use of the city without making previous request of the city to sue.~~

Section 6. The Civil Service Board shall have the authority, exercisable by any of its members, to review and approve all promotional processes in the Police and Fire Departments and may review any promotional decision in accordance with Section 7 of this Act but no promotional decision may be changed except in accordance with Section 8 of this Act. This section shall not apply to promotional processes initiated prior to the effective date of this Act.

Sec. 13. Section 7. The council, Council, the city manager, City Manager, the Director or chair of the Civil Service Board, or any person designated by any of them, may make investigations concerning the facts in respect to the operation and enforcement of the provisions of this Act and of the rules established thereunder, and concerning the condition of the civil service of the city City or any branch thereof, thereof and may refer such matters to the Civil Service Board for hearing in accordance with Section 8 of this Act, or for further investigation as appropriate. Written charges of misconduct or inefficiency against any officer or employee in the classified service may be filed with the Director of Civil Service by any person. The Civil Service Board shall investigate any such charges, or cause them to be investigated, and report the findings of the investigation, in writing, to the authority responsible for the appointment of the officer or employee against whom the charges have been made. Any person, or persons, making any investigation authorized or required by this Section, section, shall have the power to subpoena and require the attendance of witnesses. A copy of the report of such the investigation shall be filed with the city clerk and be open for public inspection, inspection, subject to the provisions of the Personnel Privacy Act or other laws governing the disclosure of records in this State.

Sec. 14. Section 8. (a) Whenever any member of the classified service of the City of Asheville is discharged, suspended, reduced in rank, transferred against his or her will, or is denied any promotion or raise in pay which he or she would be entitled to, that member shall be entitled to a hearing before the Civil Service Board of the City of Asheville to determine whether or not the action complained of is justified.

(b) Any member of the classified service of the City of Asheville who desires such a hearing shall file his or her request for hearing with the city clerk within 10 days after learning of the act or omission

of which he or she ~~complains~~, complains but not before the member shall have exhausted his or her remedy provided by the grievance procedures established by ordinance or policy of the City and the grievance procedure shall be concluded within 30 days. If the grievance procedure is not concluded within 30 days, the member may proceed as provided in this section. Upon receipt of ~~such notice~~, notice as required in this section, the city clerk shall set the matter for hearing before the ~~civil service board~~ Civil Service Board at a date not less than five nor more than 15 days from the clerk's receipt of such notice. Except for the time for filing the initial request for hearing with the Board, the Board may extend the time for taking action under this section for cause or by agreement of the parties to the proceeding.

(c) Any member of the classified service of the City of Asheville who requests a hearing pursuant to this ~~act~~ Act shall be entitled to be represented by counsel of his or her choice at all stages of the proceeding. ~~It shall be the duty of the city attorney to represent the city in cases where the complaining member of the classified service is represented by counsel.~~ The City may be represented by its attorney at any such hearing.

(d) At such hearing, the burden of proving the justification of the act or omission complained of shall be upon the City of Asheville and the member requesting the hearing shall be entitled to inspect and copy any records upon which the ~~city~~ City plans to rely at ~~such hearing, provided, that such the hearing~~ if the records are requested in writing by the member or his or her attorney prior to the day set for the hearing.

(e) The ~~civil service board~~ Civil Service Board shall render its decision in writing within five days after the conclusion of the hearing. If the ~~board~~ Board determines that the act or omission complained of is not justified, the ~~board~~ Board shall order to rescind whatever action the ~~board~~ Board has found to be unjustified and may order the ~~city~~ City to take such steps as are necessary for a just conclusion of the matter before the ~~board~~ Board. Upon reaching its decision, the ~~board~~ Board shall, in writing, immediately inform the city clerk and the member requesting the hearing of the ~~board's decision and shall do so in writing.~~ Board's decision.

(f) Within ten days of the receipt of notice of the decision of the ~~board~~ Board, either party may appeal to the Superior Court Division of the General Court of Justice for Buncombe County for a trial de novo. The appeal shall be effected by filing with the Clerk of the Superior Court of Buncombe County a petition for trial in superior court, setting out the facts upon which the petitioner relies for relief. If the petitioner desires a trial by jury, the petition shall so state. Upon the filing of the petition, the clerk of the superior court shall issue a civil summons as in regular civil action, and the sheriff of Buncombe County shall serve the summons and petition on all parties who did not join in the petition for trial. It shall be sufficient service upon the City of Asheville for the sheriff to serve the petition and

summons upon the clerk of the ~~City of Asheville, City~~. Thereafter, the matter shall proceed to trial as any other civil action.

~~Sec. 15. The Council shall be ordinance establish a schedule of compensation for officers and employees in the classified service which shall provide uniform compensation for like service. such schedule of compensation may establish a minimum and a maximum for any grade.~~

~~Sec. 16. Any applicant for any office or employment in the classified service who shall knowingly make any false statement in connection with any test shall thereby forfeit his right to be entered upon the eligible register and in case he has been appointed to an office or employment, he shall forfeit it and shall not within three years thereafter be eligible to appointment to any office or employment in the service of the City, nor shall he, during that time, be entitled to take any civil service test.~~

~~Sec. 17. No applicant for civil service test or for appointment to the classified service shall, either directly or indirectly, give, render or pay or promise to give, render or pay any money, service or other valuable thing to any person for or on account of, or in connection with, his test, appointment or proposed appointment, nor shall he ask for or receive any recommendation or assistance from any person in the services of the city other than a statement regarding any previous service to the city as a subordinate under such officer or employee.~~

~~Sec. 18. No person shall willfully or corruptly make any false statement, certificate, mark, grading or report in regard to any test or appointment held or made under the civil service provisions of this Act, or in any manner commit or attempt to commit any fraud on the impartial execution of any provisions of the civil service rules.~~

~~Sec. 19. No person in the administrative and/or classified service of the city shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution for any political party or political purpose whatever. No person shall orally or by letter solicit or be in any manner concerned in soliciting any assessment, subscription or contribution for any political purpose from any person holding a position in the administrative and/or classified service. No person shall use or promise to use his influence or official authority to secure any appointment or prospective appointment, to any position in the service of the city as a reward or return for personal or partisan political service.~~

~~Sec. 20. Section 9. No person about to be appointed to any position in the service of the city City shall sign or execute a resignation dated or undated, in advance of such appointment. No person in the service of the city City shall discharge, suspend, layoff, reduce in grade or in any manner change the official rank or compensation of any person in such service, or promise or threaten to do so, for withholding or neglecting to make any contribution or money or service or any valuable thing for any political purpose. No person in the administrataive service of the city shall use his official~~

authority to influence or coerce the political action of any person or body, or to interfere with any nomination or election to public office.

~~Sec. 21. No person in the administrative and/or classified service of the City of Asheville shall act as an officer of a political organization, take part in a political campaign, serve as a member of a committee of any such organization, or circulate, or seek signatures to any petition provided for by primary or election laws, or act as a worker in favor of or in opposition to any candidate for public office. This shall not be construed to restrict the right of any employee in the qualified service, to vote in any election, when qualified.~~

~~Sec. 22. Section 10. It shall be the duty of the Director of Civil Service Board to supervise the execution of the foregoing civil service provisions of this Act and of the rules made thereunder, and it shall be the duty of all persons in the service of the city City to comply with such rules and to aid in their enforcement. Any person, who, by himself or with others, willfully or corruptly deceives or obstructs any person in respect to his/her right to take part in any test for admission to the classified service of the city; or willfully and corruptly marks, grades or reports upon the test or proper standing of any person tested for appointment in the classified service, or aids in so doing; or willfully or corruptly makes any false representation as to the results of such tests or concerning persons so tested; or furnished special or secret information for the purpose of either improving or injuring the prospects or chances of a person tested, or to be appointed, employed or promoted; or impersonates any person, or permits or aids in any impersonation or appointment or request to be tested or registered; or who makes known or assists in making known to any applicant for test, in advance thereof, any question to be asked on such test, exercise the rights as stated herein; or willfully or through culpable negligence violates any of the provisions of this Act, shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000), or by imprisonment for a term not exceeding six (6) months. If any such person be an applicant for competitive test, he shall be excluded therefrom; if he be an eligible, his name shall be removed from the register of eligibles; and if he be an officer or employee of the city, he shall immediately forfeit his office or employment.~~

~~Sec. 23. Any taxpayer in the city may maintain an action to recover for the City any sum of money paid in violation of the civil service provisions, or to enjoin the Director of Civil Service from attaching his certificate to a payroll, or account for services rendered, in violation of this Act or the rules made thereunder; and the rules made under the foregoing provisions shall for this and all other purposes have the force of law.~~

~~Sec. 24. Section 11. Any and all employees of the classified service as hereinabove defined, defined in this Act, who are members of the classified service as defined in this Act at the time of the first election of a Civil Service Director under this Act, shall, without test,~~

~~certification or reappointment, or without complying with any of the provisions of this Act, relating in any way to qualifications for or appointment to the position she or he then holds, effective date of this Act, shall be deemed to hold and occupy such position as an employee of the civil service of the city City, as established by this Act, subject only to layoff, suspension ~~suspension~~, or removal therefrom, as provided in this Act, and all of the provisions of this Act shall be applicable to any and all such employees.~~

~~Sec. 25. In case of emergency, declared to be such by a resolution adopted by the council in regular or special session, requiring, in the opinion of the council, the employment of more persons than are available for appointment from the eligible list in any branch of the classified service, or immediately available for appointment from such list, the city council may, without waiting for an eligible list of employees, employ or authorize the employment of as many employees as, in the opinion of the council, may be needed to meet the emergency, such employment to continue throughout the emergency and until an eligible list of employees is available.~~

~~Sec. 26. Constitutionality of Act. Section 12. If any Section, section, subsection, subdivision, sentence, clause ~~clause~~, or phrase of this Act shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Act.~~

~~Sec. 27. Section 13. All laws and clauses of laws in conflict with the provisions of this Act, including all of Chapter 83 of the Session Laws of 1947, as amended by Chapter 459 of the Session Laws of 1951, and Chapter 1000 of the Session Laws of 1951, Act are hereby repealed.~~

~~Sec. 28. The public interest requires that this act shall be in full force and effect from and after its ratification."~~

Section 2. Notwithstanding the provisions of this act, the existing Civil Service Board shall continue in operation, with no interruption in the term of any current member, and without affecting the manner of selection or eligibility for current service or successive terms of any member, and the powers, duties, and responsibilities of the Board shall be as prescribed by this act from and after the effective date of this act.

Section 3.(a) The board of commissioners of a county may direct the board of elections of that county to conduct a countywide advisory referendum on zoning in the unincorporated area of that county.

Section 3.(b) The board of commissioners shall decide the form and content of the issue on the ballot.

Section 3.(c) Any referendum under this section must be conducted on or before December 31, 1999.

Section 3.(d) This section applies to Buncombe County only.

Section 4. Sections 1 and 2 of this act become effective 30 days after they become law. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law on the date it was ratified.

S.B. 619

SESSION LAW 1999-304

AN ACT CONCERNING SATELLITE ANNEXATIONS BY THE TOWN OF FUQUAY-VARINA AND TO MODIFY THE HILLSBOROUGH MEALS TAX PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 432 of the 1997 Session Laws reads as rewritten:

"Section 1. (a) G.S. 160A-58.1(b) is amended by adding a new subdivision to read:

'(2a) If any territory proposed for annexation under this Part is an area that another city has agreed not to annex under an agreement with the annexing city under Part 6 of this Article, then the proximity to that other city shall not be considered in applying subdivision (2) of this subsection. This subdivision applies only where the annexing ~~city is~~ cities are the Town of Towns of Fuquay-Varina and Wake Forest.'

(b) Section 2(b) of Chapter 882 of the 1989 Session Laws reads as rewritten:

'(b) Except as provided by G.S. 160A-58.1(b)(2a) or subsection (a) of this section, the provisions of Part 4 of Article 4A of Chapter 160A of the General Statutes shall continue to apply to the ~~Town of Towns of Fuquay-Varina and Wake Forest.~~'"

Section 2. Subsection (g) of Section 1 of Chapter 449 of the 1993 Session Laws reads as rewritten:

"(g) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a return required by this section or pay the tax due under this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. In addition, for failure or refusal to file the return for a period of 30 days after it is due, the taxpayer is subject to an additional tax, as a penalty, of one hundred dollars (\$100.00). The town board has the same authority to waive the penalties for a tax levied under this act that the Secretary of Revenue has to waive the penalties for State sales and use taxes. The remedies provided in G.S. 160A-207 apply to taxes, interest, and penalties that accrue under this act. shall pay a penalty of two dollars (\$2.00) for each day's omission, subject to a maximum of five hundred dollars (\$500.00). In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is

~~paid. The town board may, for good cause shown, compromise or forgive the additional tax penalties imposed by this section.~~

~~A person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed five hundred dollars (\$500.00), imprisonment not to exceed six months, or both."~~

Section 3. Section 1 of this act applies only to the Town of Fuquay-Varina. Section 2 of this act applies only to the Town of Hillsborough.

Section 4. Section 2 of this act becomes effective October 1, 1999, and applies to taxes due on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law on the date it was ratified.

S.B. 1110

SESSION LAW 1999-305

AN ACT TO PROVIDE AN INCENTIVE FOR BUSINESSES TO
FIND COMMERCIAL USES FOR TECHNOLOGY DEVELOPED
BY RESEARCH UNIVERSITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-129.9 reads as rewritten:

"§ 105-129.9. *Credit for investing in machinery and equipment.*

(a) ~~Credit.~~ General Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if it is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(a1) Technology Commercialization Credit. -- If a taxpayer is eligible for the credit allowed in this section with respect to eligible machinery and equipment and qualifies for one of the credits allowed in G.S. 105-129.9A with respect to the same machinery and equipment, the taxpayer may choose to take one of those credits instead of the credit allowed in this section. A taxpayer may take the credit allowed in this section or one of the credits allowed in G.S. 105-129.9A during a taxable year with respect to eligible machinery

and equipment, but may not take more than one of these credits with respect to the same machinery and equipment.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State. A taxpayer that claims a credit under this section must include with the application for certification required under G.S. 105-129.6(a) specific documentation supporting the taxpayer's calculation of the eligible investment amount under this subsection.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	\$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) **Planned Expansion.** -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection."

Section 2. Article 3A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-129.9A. *Technology commercialization credit.*

(a) **Credit.** -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer may qualify for a credit as provided in this section. If the taxpayer is also eligible for the credit allowed under G.S. 105-129.9 with respect to the eligible machinery and equipment, the taxpayer may choose instead of the credit allowed under G.S. 105-129.9 with respect to the machinery and equipment to take one of the credits under this section for which the taxpayer qualifies. The twenty percent (20%) credit is a credit equal to twenty percent (20%) of the excess of the eligible investment amount over the applicable threshold for the taxable year. The fifteen percent (15%) credit is a credit equal to fifteen percent (15%) of the excess of the eligible investment amount over the applicable threshold for the taxable year.

Except as provided in this section, the provisions of G.S. 105-129.9 apply to the credits allowed under this section. As used in this section, the term 'research university' means an institution of higher education classified as a Research I university or a Research II university in the most recent edition of 'A Classification of Institutions of Higher Education,' the official report of The Carnegie Foundation for the Advancement of Teaching.

A credit allowed under this section must be taken for the taxable year in which the machinery and equipment are placed in service. A taxpayer may take the twenty percent (20%) credit allowed under this section, the fifteen percent (15%) credit allowed under this section, or the credit allowed in G.S. 105-129.9 during a taxable year with respect to eligible machinery and equipment, but may not take more

than one of these credits with respect to the same machinery and equipment.

(b) Eligible Investment Amount. -- In calculating the eligible investment amount under this section, for the purpose of determining the taxpayer's machinery and equipment in service in this State during the taxable year and the three immediately preceding taxable years, the following exceptions apply:

(1) Machinery and equipment that were transferred to another taxpayer during the three-year period are considered the taxpayer's machinery and equipment if they are still in service in this State during the taxable year, and the taxpayer to whom they were transferred is ineligible under G.S. 105-129.4(e) to claim a new credit for the investment under this Article.

(2) Machinery and equipment that were taken out of service during the three-year period are considered the taxpayer's machinery and equipment in service if all of the following conditions are met:

a. The machinery and equipment were taken out of service by the taxpayer or by the person to whom the taxpayer transferred them.

b. The machinery and equipment were taken out of service at a location separate from any location with respect to which the taxpayer claims a credit under this section.

c. The machinery and equipment were used in a business that was not and is not competitive with any business with respect to which the taxpayer claimed a credit under this section. For the purpose of this subdivision, two businesses are not competitive if both of the following conditions are met:

1. Their products and services lack reasonable interchangeability of use by the customer, based on use but without regard to quality, price, condition, or availability.

2. Their products and services lack reasonable interchangeability of production in that the businesses could not readily switch production capabilities from one product or service to the other.

(c) Documentation. -- If the taxpayer claims the exception provided in subdivision (b)(2) of this section, the Secretary of Commerce must obtain an opinion of the Attorney General that the taxpayer meets all of the conditions of subdivision (b)(2) before the Secretary certifies the application under G.S. 105-129.6(a).

(d) Twenty Percent Credit. -- A taxpayer qualifies for a twenty percent (20%) credit under this section if it meets all of the following conditions:

(1) The eligible machinery and equipment are directly related to production based on technology developed by and licensed from a research university or are used to produce resources

essential to the taxpayer's production based on technology developed by and licensed from a research university.

- (2) The eligible machinery and equipment are placed in service in a tier one, two, or three enterprise area.
- (3) The eligible investment amount is at least ten million dollars (\$10,000,000) for the taxable year.
- (4) The Secretary of Commerce has certified that the taxpayer will invest at least one hundred fifty million dollars (\$150,000,000) in eligible machinery and equipment in a tier one, two, or three enterprise area by the end of the fourth year after the year in which the taxpayer first places eligible machinery and equipment in service in the enterprise area.
- (5) No more than nine years have passed since the first taxable year the taxpayer claimed a credit under this section with respect to the same location.

(e) Fifteen Percent Credit. -- A taxpayer qualifies for a fifteen percent (15%) credit under this section if it meets all of the following conditions:

- (1) The eligible machinery and equipment are directly related to production based on technology developed by and licensed from a research university, or are used to produce resources essential to the taxpayer's production based on technology developed by and licensed from a research university.
- (2) The eligible machinery and equipment are placed in service in a tier one, two, or three enterprise area.
- (3) The eligible investment amount is at least ten million dollars (\$10,000,000) for the taxable year.
- (4) The Secretary of Commerce has certified that the taxpayer will invest at least one hundred million dollars (\$100,000,000) in eligible machinery and equipment in a tier one, two, or three enterprise area by the end of the fourth year after the year in which the taxpayer first places eligible machinery and equipment in service in the enterprise area.
- (5) No more than nine years have passed since the first taxable year the taxpayer claimed a credit under this section with respect to the same location."

Section 3. G.S. 105-129.4(d) reads as rewritten:

"(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer forfeits the technology commercialization credit allowed under G.S. 105-129.9A if the taxpayer fails to make the level of investment required by subsection (e) of that section within the required period or if the taxpayer fails to meet the terms of its licensing agreement with a

research university. If a taxpayer claimed a twenty percent (20%) technology commercialization credit under G.S. 105-129.9A(d) and fails to make the level of investment required under that subsection within the required period, but does make the level of investment required under subsection (e) of that section within the required period, the taxpayer forfeits one-fourth of the twenty percent (20%) credit.

A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs jobs, the technology commercialization credit, or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the technology commercialization credit or the credit for investing in machinery and equipment was claimed."

Section 4. G.S. 105-129.5 reads as rewritten:

"§ 105-129.5. *Tax election; cap.*

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide the technology commercialization credit allowed in G.S. 105-129.9A between the taxes against which it is allowed. The taxpayer shall elect the percentage of the credit that will be taken against each tax when filing the return on which the credit is first taken. This election is binding. The percentage of the credit elected to be taken against each tax may be carried forward only against the same tax.

The taxpayer must take any other credit allowed in this Article against only one of the taxes against which it is allowed. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of a credit with respect to a large investment or with respect to the technology commercialization

credit allowed in G.S. 105-129.9A may be carried forward for the succeeding 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years."

Section 5. This act is effective for taxable years beginning on or after January 1, 2000.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 4:02 p.m. on the 15th day of July, 1999.

H.B. 331

SESSION LAW 1999-306

AN ACT TO REDESIGNATE THE COMMUNITY PENALTIES PROGRAM AS THE SENTENCING SERVICES PROGRAM, TO CLARIFY THAT THE WORK PRODUCT OF THESE PROGRAMS IS ALWAYS PRESENTED TO THE COURTS, AND TO MAKE OTHER CLARIFYING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Subchapter XIII of Chapter 7A of the General Statutes reads as rewritten:

"SUBCHAPTER XIII. COMMUNITY PENALTIES PROGRAM.

"ARTICLE 61.

~~"Community Penalties Program Act of 1983.~~

~~"Sentencing Services Programs.~~

"§ 7A-770. *Purpose.*

This Article shall be known and may be cited as the "~~Community Penalties Act of 1983.~~" "Sentencing Services Act." The purpose of this Article is to ~~reduce prison overcrowding by providing~~ establish a statewide sentencing services program that will provide the judicial system with community sentences to be used in lieu of and at less cost than imprisonment. information that will assist that system in imposing sentences that make the most effective use of available resources. In furtherance of this purpose, this Article provides for the following:

- (1) Establishment of local ~~sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision.~~ programs that can provide judges and other court officials with information about local correctional programs that are appropriate for offenders who require a comprehensive sentencing plan that combines punishment, control, and rehabilitation services.
- (2) Increased opportunities for certain felons to make restitution to victims of crime through financial reimbursement or community service.
- (3) Local involvement in the development of ~~community penalties~~ sentencing services to assure that they are specifically designed to meet local needs.
- (4) ~~Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons~~

~~need not be built or new space added.~~ Effective use of available community corrections programs by advising judges and other court officials of the offenders most suited for a particular program.

"§ 7A-771. Definitions.

As used in this Article:

- (1) ~~"Community penalties~~ "Sentencing services program" means an agency or State-run office within the judicial superior court district which shall (i) prepare ~~community penalty sentencing plans;~~ (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) ~~monitor the progress of offenders placed on community penalty plans,~~ assist offenders in initially obtaining services ordered as part of a sentence entered pursuant to a sentencing plan, if the assistance is not available otherwise.
- (2) ~~"Community penalty~~ "Sentencing plan" means a plan presented in writing to the sentencing judge which provides a detailed assessment and description of the targeted offender's proposed community penalty, offender's background, including available information about past criminal activity, a matching of the specific offender's needs with available resources, and, if appropriate, the program's recommendations regarding an intermediate sentence.
- (2a) "Director" means the Director of the Administrative Office of the Courts.
- (2b) "Superior court district" means a superior court district established by G.S. 7A-41 for those districts consisting of one or more entire counties, and otherwise means the applicable set of districts as that term is defined in G.S. 7A-41.1.
- (3) ~~"Judicial district" means a district court district as defined in G.S. 7A-133.~~
- (4) Repealed by Session Laws 1991, c. 566, s. 4.
- (5) ~~"Targeted offenders" means persons charged with or convicted of misdemeanors or felonies who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who are facing an imminent and substantial threat of imprisonment.~~

"§ 7A-772. Allocation of funds.

(a) The Director may award grants in accordance with the policies established by this Article and in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of ~~community penalties sentencing services programs.~~ Community penalties Sentencing services programs that are grantees shall use such the funds to develop, implement, and monitor community penalty plans. exclusively to develop a sentencing

services program that provides sentencing information to judges and other court officials. Grants shall be awarded by the Director to agencies whose comprehensive program plans promise best to meet the goals set forth herein. The Director shall consider the plan required by G.S. 7A-774 in making funding decisions. If a senior resident superior court judge has not formally endorsed the plan, the Director shall consider that fact in making grant decisions, but the Director may, if appropriate, award grants to a program in which the judge has not endorsed the plan as submitted.

(b) The Director may establish local ~~community penalties~~ sentencing services programs and appoint those staff as the Director deems necessary. These personnel may serve as full-time or part-time State employees or may be hired on a contractual basis when determined appropriate by the director. Contracts entered under the authority of this subsection shall be exempt from the competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall adopt rules necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of ~~community penalties~~ sentencing services programs under this Article shall be administered by the Administrative Office of the Courts.

"§ 7A-773. Responsibilities of a ~~community penalties~~ sentencing services program.

A ~~community penalties~~ sentencing services program shall be responsible for:

- (1) ~~Targeting offenders who are eligible to receive an intermediate punishment based on their class of offense and prior record level and who face an imminent and substantial threat of imprisonment.~~
Identifying offenders who:
 - a. Are charged with or have been offered a plea by the State for a felony offense for which the class of offense and prior record level authorize the court to impose an active punishment, but do not require that it do so;
 - b. Have a high risk of committing future crimes without appropriate sanctions and interventions; and
 - c. Would benefit from the preparation of an intensive and comprehensive sentencing plan of the type prepared by sentencing services programs.
- (2) Preparing detailed ~~community penalty~~ sentencing services plans requested pursuant to G.S. 7A-773.1 for presentation to the sentencing judge by the offender's attorney or at the request of the sentencing judge.
- (3) Contracting or arranging with public or private agencies for services described in the ~~community penalty~~ sentencing plan.
- (4) ~~Monitoring the progress of offenders under community penalty plans.~~

"§ 7A-773.1. Who may request plans; disposition of plans; contents of plans.

(a) A judge presiding over a case in which the offender meets the criteria set forth in G.S. 7A-773(1) may request, at any time prior to the imposition of sentence, that the sentencing services program provide a sentencing plan. The court may also request, at any time prior to the imposition of sentence, that the program provide a sentencing plan in misdemeanor cases in which the class of offense is Class A1 or Class 1 and the prior conviction level is Level III, if the court determines that the preparation of such a plan is in the interest of justice. In addition, in cases in which the offender meets the criteria set forth in G.S. 7A-773, the defendant or a prosecutor, at any time before the court has accepted a guilty plea or received a guilty verdict, may request that the program provide a plan. However, prior to an adjudication of guilt, a defendant may decline to participate in the preparation of a plan within a reasonable time after the request is made. In that case, no plan shall be prepared or presented to the court by the sentencing services program prior to an adjudication of guilt. A defendant's decision not to participate shall be made in writing and filed with the court. The comprehensive sentencing services program plan prepared pursuant to G.S. 7A-774 shall define what constitutes a reasonable time within the meaning of this subsection.

(b) Any sentencing plan prepared by a sentencing services program shall be presented to the court, the defendant, and the State in an appropriate manner.

(c) Sentencing plans prepared by sentencing services programs may include recommendations for use of any treatment or correctional resources available, unless the sentencing court instructs otherwise. Sentencing plans that identify an offender's needs for education, treatment, control, or other services shall, to the extent feasible, also identify resources to meet those needs. Plans may report that no intermediate punishment is appropriate under the circumstances of the case.

(d) To the extent allowed by law, the sentencing services program shall develop procedures to ensure that the program staff may work with offenders before a plea is entered. To that end, no information obtained in the course of preparing a sentencing plan may be used by the State for the purpose of establishing guilt.

"§ 7A-774. Requirements for a comprehensive ~~community penalties~~ sentencing services program plan.

Agencies applying for grants shall prepare a comprehensive ~~community penalties~~ sentencing services program plan for the development, implementation, operation, and improvement of a ~~community penalties~~ sentencing services program for the judicial superior court district, as prescribed by the Director. The plan shall be updated annually and shall be submitted to the senior resident superior court judge for the superior court district for the judge's

advice and written endorsement. The plan shall then be forwarded to the Director for approval. The ~~Such~~ plan shall include:

- (1) ~~Objectives~~ Goals and objectives of the community penalties sentencing services program.
- (2) ~~Goals for reduction of offenders committed to prison for each county within the district, and a system of monitoring the number of commitments to prison.~~ Specification of the kinds or categories of offenders for whom the programs will provide sentencing information to the courts.
- (3) ~~Procedures for identifying targeted offenders, and a plan for referral of targeted offenders to the community penalties program.~~ Proposed procedures for the identification of appropriate offenders to comply with the plan and the criteria in G.S. 7A-773(1).
- (4) Procedures for preparing and presenting community penalty plans to the court.
- (4a) Strategies for ensuring that judges and court officials who are possible referral sources use the program's services in appropriate cases.
- (5) Procedures for obtaining services from existing public or private agencies, and a detailed budget for staff, contracted services, and all other costs.
- (6) ~~Procedures for monitoring the progress of offenders on community penalty plans and for cooperating with the probation personnel who have supervisory responsibility for the offender.~~
- (7) ~~Procedures for returning offenders who do not comply with their community penalty plan to court for action by the court.~~
- (8) ~~Procedures for evaluating the program's effect on numbers of prison commitments.~~

"§ 7A-775. ~~Community penalties~~ Sentencing services board.

(a) ~~Each community penalties sentencing services program shall establish a community penalties sentencing services board to provide direction and assistance to the community penalties sentencing services program in the implementation and evaluation of the plan.~~ Community penalties Sentencing services boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The community penalties sentencing services board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The community penalties sentencing services board shall meet on a regular basis, and its duties include, but are not limited to, the following:

- (1) Preparation and submission of the sentencing services program plan to the senior resident superior court judge and the Director annually, as provided in G.S. 7A-772(a);
- (1)(1a) Development of an annual budget for the program;

- (2) Hiring, firing, and evaluation of program personnel;
- (3) Selection of board members;
- (4) ~~Arranging for a private and independent an annual audit;~~ audit, in accordance with G.S. 143-6.1;
- (5) Development of procedures for contracting for services.

(b) If the board serves as an advisory board to a sentencing services program located in a local or State agency, the board's duties do not include budgeting and personnel decisions.

"§ 7A-776. Limitation on use of funds.

Funds provided for use under the provisions of this Article shall not be used for the operating costs, construction, or any other costs associated with local jail ~~confinement~~, confinement, or for any purpose other than the operation of a sentencing services program that complies with this Article.

"§ 7A-777. Evaluation.

The Director shall evaluate each ~~community penalties~~ sentencing services program on an annual basis to determine the degree to which the ~~prison commitments have been reduced or have kept from increasing as a result of the community penalties program.~~ The Director shall not renew or continue a program that has failed to affect commitments and that shows no promise of doing so in the future, after allowing for changes in the number of convictions. program effectively meets the needs of the courts in its judicial district by providing them with sentencing information. In conducting the evaluation, the Director shall consider the goals and objectives established in the program's plan, as well as the extent to which the program is able to ensure that the offenders served by the plan meet the criteria established in G.S. 7A-773(1)."

Section 2. G.S. 15A-1340.11(6) reads as rewritten:

"(6) Intermediate punishment. -- A sentence in a criminal case that places an offender on supervised probation and includes at least one of the following conditions:

- a. Special probation as defined in G.S. 15A-1351(a).
- b. Assignment to a residential program.
- c. House arrest with electronic monitoring.
- d. Intensive probation.
- e. Assignment to a day-reporting center.

In addition, a sentence to regular supervised probation imposed pursuant to a community penalties plan as defined in G.S. 7A-771(2) is an intermediate punishment, regardless of whether any of the above conditions is imposed, if the plan is accepted by the court and the plan does not include active punishment."

Section 3. G.S. 15A-1340.14(f) reads as rewritten:

"(f) Proof of Prior Convictions. -- A prior conviction shall be proved by any of the following methods:

- (1) Stipulation of the parties.
- (2) An original or copy of the court record of the prior conviction.

- (3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.
- (4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

Section 4. Section 2 of this act becomes effective January 1, 2000, and applies to offenses committed on or after that date. The remainder of this act becomes effective January 1, 2000, except that community penalties plans requested for offenders prior to that date shall be governed by the law in effect at the time the plan was requested.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

Became law upon approval of the Governor at 9:15 p.m. on the 15th day of July, 1999.

S.B. 34

SESSION LAW 1999-307

AN ACT TO PERMIT THE TEMPORARY WAIVER OF CERTAIN RULES FOR CERTAIN LICENSED HEALTH CARE FACILITIES THAT PROVIDE TEMPORARY SHELTER OR SERVICES DURING DISASTERS AND EMERGENCIES.

The General Assembly of North Carolina enacts:

Section 1. Part A of Article 6 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"§ 131E-112. Waiver of rules for health care facilities that provide temporary shelter or temporary services during a disaster or emergency.

(a) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to facilities or home care agencies to the extent necessary to allow the facility or home care agency to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

Section 2. Article 1 of Chapter 131D of the General Statutes is amended by adding the following new section to read:

"§ 131D-7. Waiver of rules for certain adult care homes providing shelter or services during disaster or emergency.

(a) The Division of Facility Services may temporarily waive, during disasters or emergencies declared in accordance with Article 1 of Chapter 166A of the General Statutes, any rules of the Commission pertaining to adult care homes to the extent necessary to allow the adult care home to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1 of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the adult care home. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(b) As used in this section, 'emergency management agency' is as defined in G.S. 166A-4(2)."

Section 3. This act becomes effective July 1, 1999, and applies to shelter or services provided on and after that date.

In the General Assembly read three times and ratified this the 8th day of July, 1999.

Became law upon approval of the Governor at 9:18 p.m. on the 15th day of July, 1999.

S.B. 1074

SESSION LAW 1999-308

AN ACT LIMITING LIABILITY FROM YEAR 2000 FAILURES BY PROVIDING CERTAIN PARTIES THE RIGHT TO ASSERT AN AFFIRMATIVE DEFENSE BASED ON A YEAR 2000 PROBLEM.

The General Assembly of North Carolina enacts:

Section 1. Subchapter XIV of Chapter 1 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 43E.

"Affirmative Defense Based on Year 2000 Failure.

"§ 1-539.25. Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this Article:

- (1) 'Electronic computing device' means any computer hardware or software, computer chip, embedded chip, process control equipment, or other information system that:
 - a. Is used to capture, store, manipulate, or process data; or
 - b. Controls, monitors, or assists in the operation of physical apparatus that is not primarily used as a computer but that relies on automation or digital technology to function, including, but not limited to, vehicles, vessels, buildings, structures, facilities, elevators, medical equipment, traffic signals, and factory machinery.
- (2) 'Person' means any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society which may sue or be sued under a common name.
- (3) 'Year 2000 problem' means any computing, physical, enterprise, or distribution system complication that has occurred or may occur as a result of the change of the year from 1999 to 2000 in any person's technology system, including computer hardware, programs, software, or systems; embedded chip calculations or embedded systems; firmware; microprocessors; or management systems, business processes, or computing applications that govern, utilize, drive, or depend on the Year 2000 processing capability of the person's technology systems. 'Year 2000 problem' includes the common computer programming

practice of using a two-digit field to represent a year, resulting in erroneous date calculations; an ambiguous interpretation of the term or field '00'; the failure to recognize 2000 as a leap year; algorithms that use '99' or '00' to activate another function; or the failure of any other applications, software, or hardware due to their date-sensitive nature.

"§ 1-539.26. Right to affirmative defense based on year 2000 problem.

(a) A person has an affirmative defense to any claim or action brought against the person if the person establishes that the person's default, failure to pay, breach, omission, or other violation that is the basis of the claim against the person was caused by a year 2000 problem associated with an electronic computing device that is not owned, controlled, or operated by the person, and, if it were not for the year 2000 problem, the person would have been able to satisfy the obligations that are the basis of the claim.

(b) If a person establishes an affirmative defense as set forth in subsection (a) of this section, the court shall dismiss the claim without prejudice and the person or entity making the claim against the person shall not reassert the claim as to which the affirmative defense was asserted for a period of 60 days from the date on which the affirmative defense is granted by the court. Any statute of limitations applicable to the claim is tolled for 90 days upon the granting of the affirmative defense under this section.

(c) This section does not affect those transactions upon which a default has occurred before any disruption of financial or data transfer operations attributable to the year 2000 date change, and does not apply to claims for personal injury or wrongful death.

(d) The granting of the affirmative defense under this section does not impair, extinguish, discharge, satisfy, or otherwise affect the underlying obligation that is the basis of the claim against which the affirmative defense was asserted; except that the inability of a party to bring the claim based upon the obligation must be delayed as set forth in subsection (b) of this section.

(e) An individual who has established an affirmative defense as set forth in subsection (a) of this section may dispute directly with a credit reporting agency operating in this State any item of information in the individual's consumer file relating to the subject of the affirmative defense. The credit reporting agency shall comply with the requirements of the federal 'Fair Credit Reporting Act' in responding to the dispute. If requested by the individual, the credit reporting agency shall include the individual's statement of explanation regarding an item of information that the consumer reporting agency denies is inaccurate or a statement concerning the content of the individual's consumer file. The statement shall not exceed 100 words and the credit reporting agency shall not charge the individual a fee for the inclusion of this statement in the individual's consumer file.

(e1) A person who agrees to participate in prelitigation mediation as provided in G.S. 66-283 may not assert an affirmative defense as set forth in subsection (a) of this section."

Section 2. G.S. 1-539.26(e1), as enacted in Section 1 of this act, is effective only if Senate Bill 1005 becomes law.

Section 3. This act is effective when it becomes law and shall apply to actions accruing on or after that date. The act expires October 1, 2000, except that any affirmative defense raised in a pending civil action pursuant to this act remains effective until the conclusion of that action.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

Became law upon approval of the Governor at 9:22 p.m. on the 15th day of July, 1999.

S.B. 310

SESSION LAW 1999-309

AN ACT TO PROVIDE THAT THE TIME FOR GIVING NOTICE OF APPEAL IN CASES OF TERMINATION OF PARENTAL RIGHTS AND EMANCIPATION AND IN HEARINGS TO TRANSFER A JUVENILE TO SUPERIOR COURT SHALL BE TEN DAYS AFTER ENTRY OF THE ORDER RATHER THAN TEN DAYS AFTER THE DATE OF THE HEARING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-1112, as enacted by S.L. 1998-202 and renumbered by the Codifier of Statutes as G.S. 7B-1113, reads as rewritten:

"§ 7B-1112. *Appeals; modification of order after affirmation.*

*Any juvenile, parent, guardian, custodian, or agency who is a party to a proceeding under this Article may appeal from an adjudication or any order of disposition to the Court of Appeals, provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the best interests of the State. Upon the affirmation of the order of adjudication or disposition of the court in a juvenile case by the Court of Appeals, or by the Supreme Court in the event of an appeal, the court shall have authority to modify or alter its original order of adjudication or disposition as the court finds to be in the best interests of the juvenile to reflect any adjustment made by the juvenile or change in circumstances during the period of time the case on appeal was pending, provided that if the modifying order be entered ex parte, the court shall give notice to interested parties to show cause, if any

there be, within 10 days thereafter, as to why the modifying order should be vacated or altered."

Section 2. G.S. 7B-2603, as enacted by S.L. 1998-202, reads as rewritten:

"§ 7B-2603. *Right to appeal transfer decision.*

(a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after ~~the transfer hearing in the district court.~~ entry of the order of transfer in district court. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. A juvenile who fails to appeal the transfer order to the superior court waives the right to raise the issue of transfer before the Court of Appeals until final disposition of the matter in superior court. The clerk of superior court shall provide the district attorney with a copy of any written notice of appeal filed by the attorney for the juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if an appeal has been entered and not withdrawn, the clerk shall transfer the case to the superior court docket. The superior court shall, within a reasonable time, review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer. The superior court shall not review the findings as to probable cause for the underlying offense.

(b) Once an order of transfer has been entered by the district court, the juvenile has the right to be considered for pretrial release as provided in G.S. 15A-533 and G.S. 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release, the court shall order that the juvenile be detained in a detention facility while awaiting trial. The court may order the juvenile to be held in a holdover facility as defined by G.S. 7B-1501 at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the court finds that it would be inconvenient to return the juvenile to the detention facility.

(c) If an appeal of the transfer order is taken, the superior court shall enter an order either (i) remanding the case to the juvenile court for adjudication or (ii) upholding the transfer order. If the superior court remands the case to juvenile court for adjudication and the juvenile has been granted pretrial release provided in G.S. 15A-533 and G.S. 15A-534, the obligor shall be released from the juvenile's bond upon the district court's review of whether the juvenile shall be placed in secure or nonsecure custody as provided in G.S. 7B-1903.

(d) The superior court order shall be an interlocutory order, and the issue of transfer may be appealed to the Court of Appeals only after the juvenile has been convicted in superior court."

Section 3. G.S. 7B-3508, as enacted by S.L. 1998-202, reads as rewritten:

"§ 7B-3508. *Appeals.*

Any petitioner, parent, guardian, or custodian who is a party to a proceeding under this Article may appeal from any order of disposition to the Court of Appeals provided that notice of appeal is given in open court at the time of the hearing or in writing within 10 days after ~~the hearing.~~ entry of the order. Entry of an order shall be treated in the same manner as entry of a judgment under G.S. 1A-1, Rule 58 of the North Carolina Rules of Civil Procedure. Pending disposition of an appeal, the court may enter a temporary order affecting the custody or placement of the petitioner as the court finds to be in the best interests of the petitioner or the State."

Section 4. This act is effective October 1, 1999, and applies to actions filed on or after that date.

In the General Assembly read three times and ratified this the 8th day of July, 1999.

Became law upon approval of the Governor at 9:30 p.m. on the 15th day of July, 1999.

S.B. 527

SESSION LAW 1999-310

AN ACT TO PERMIT LOCAL AUTHORITIES TO PREEMPT TRAFFIC SIGNALS ON CITY STREETS AND STATE HIGHWAYS IN EMERGENCY SITUATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-169 reads as rewritten:

"§ 20-169. Powers of local authorities.

Local authorities, except as expressly authorized by G.S. 20-141 and 20-158, shall have no power or authority to alter any speed limitations declared in this Article or to enact or enforce any rules or regulations contrary to the provisions of this Article, except that local authorities shall have power to provide by ordinances for any of the following:

- (1) the regulation of Regulating traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or ~~continuous and may prohibit continuous.~~
- (2) Prohibiting other than one-way traffic upon certain highways, and may regulate highways.
- (3) Regulating the use of the highways by processions or assemblages and except that local authorities shall have the power to regulate assemblages.
- (4) Regulating the speed of vehicles on highways in public parks, but signs parks.
- (5) Authorizing law enforcement or fire department vehicles, ambulances, and rescue squad emergency service vehicles, equipped with a siren to preempt any traffic signals upon city streets within local authority boundaries or, with the approval of the Department of Transportation, on State highways within the boundaries of local authorities. The

Department of Transportation shall respond to requests for approval within 60 days of receipt of a request.

Signs shall be erected giving notices of such the special limits and regulations. regulations under subdivisions (1) through (4) of this section."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 1999.

Became law upon approval of the Governor at 9:34 p.m. on the 15th day of July, 1999.

S.B. 915

SESSION LAW 1999-311

AN ACT TO CREATE A TOBACCO RESERVE FUND FOR TOBACCO PRODUCT MANUFACTURERS NOT PARTICIPATING IN THE MASTER SETTLEMENT AGREEMENT WITH THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 37.

"Tobacco Reserve Fund.

"§ 66-290. Definitions.

As used in this Article:

- (1) 'Adjusted for inflation' means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.
- (2) 'Affiliate' means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms 'owns,' 'is owned,' and 'ownership' mean ownership of an equity interest, or the equivalent thereof, of ten percent (10%) or more, and the term 'person' means an individual, partnership, committee, association, corporation, or any other organization or group of persons.
- (3) 'Allocable share' means Allocable Share as that term is defined in the Master Settlement Agreement.
- (4) 'Cigarette' means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (ii) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (iii) any roll of tobacco wrapped in any substance containing tobacco which, because of its

appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (i) of this definition. The term 'cigarette' includes 'roll-your-own' (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of 'cigarette,' 0.09 ounces of 'roll-your-own' tobacco shall constitute one individual 'cigarette.'

- (5) 'Master Settlement Agreement' means the settlement agreement (and related documents) entered into on November 23, 1998, by the State and leading United States tobacco product manufacturers.
- (6) 'Qualified escrow fund' means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars (\$1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with G.S. 66-291(b).
- (7) 'Released claims' means Released Claims as that term is defined in the Master Settlement Agreement.
- (8) 'Releasing parties' means Releasing Parties as that term is defined in the Master Settlement Agreement.
- (9) 'Tobacco Product Manufacturer' means an entity that after the effective date of this Article directly (and not exclusively through any affiliate):
 - a. Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);
 - b. Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

c. Becomes a successor of an entity described in sub-subdivision a. or b. of this subdivision.

The term 'Tobacco Product Manufacturer' shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of sub-subdivisions a. through c. of this subdivision.

- (10) 'Units sold' means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or 'roll-your-own' tobacco containers). The Secretary of Revenue shall promulgate such rules as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year. In lieu of adopting rules, the Secretary of Revenue may issue bulletins or directives requiring taxpayers to submit to the Department of Revenue the information necessary to make the required determination under this subdivision.

"§ 66-291. Requirements.

(a) Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary or intermediaries) after the effective date of this Article shall do one of the following:

- (1) Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or
- (2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation):
 - a. 1999: \$.0094241 per unit sold after the effective date of this Article.
 - b. 2000: \$.0104712 per unit sold.
 - c. For each of 2001 and 2002: \$.0136125 per unit sold.
 - d. For each of 2003 through 2006: \$.0167539 per unit sold.
 - e. For each of 2007 and each year thereafter: \$.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (2) of section (a) of this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances:

- (1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subdivision

- (i) in the order in which they were placed into escrow and
 - (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;
- (2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or
- (3) To the extent not released from escrow under subdivisions (1) or (2) of this subsection, funds shall be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this section shall annually certify to the Attorney General that it is in compliance with this section. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

- (1) Be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty (the clear proceeds of which shall be paid to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2) in an amount not to exceed five percent (5%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent (100%) of the original amount improperly withheld from escrow;
- (2) In the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of subdivision (2) of subsection (a) of this section, may impose a civil penalty (the clear proceeds of which shall be paid to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2) in an amount not to exceed fifteen percent (15%) of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent

(300%) of the original amount improperly withheld from escrow; and

- (3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer, or similar intermediary) for a period not to exceed two years.

Each failure to make an annual deposit required under this section shall constitute a separate violation."

Section 2. Part 1 of Article 2A of Chapter 105 of the General Statutes is amended by adding the following new section to read:

"§ 105-113.4B. *Enforcement of Master Settlement Agreement Provisions.*

The Master Settlement Agreement between the states and the tobacco product manufacturers, incorporated by reference into the consent decree referred to in S.L. 1999-2, requires each state to diligently enforce Article 37 of Chapter 66 of the General Statutes. The Office of the Attorney General and the Secretary of Revenue shall perform the following responsibilities in enforcing Article 37:

- (1) The Office of the Attorney General must give to the Secretary of Revenue a list of the nonparticipating manufacturers under the Master Settlement Agreement and the brand names of the products of the nonparticipating manufacturers.
- (2) The Office of the Attorney General must update the list provided under subdivision (1) of this section when a nonparticipating manufacturer becomes a participating manufacturer, another nonparticipating manufacturer is identified, or more brands or products of nonparticipating manufacturers are identified.
- (3) The Secretary of Revenue must require the taxpayers of the tobacco excise tax to identify the amount of tobacco products of nonparticipating manufacturers sold by the taxpayers, and may impose this requirement as provided in G.S. 66-290(10).
- (4) The Secretary of Revenue must determine the amount of State tobacco excise taxes attributable to the products of nonparticipating manufacturers, based on the information provided by the taxpayers, and must report this information to the Office of the Attorney General."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 1999.

Became law upon approval of the Governor at 9:39 p.m. on the 15th day of July, 1999.

The General Assembly of North Carolina enacts:

Section 1. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 23.

"Continuity of Contract Under European Monetary Union.

"§ 53-295. Definitions.

The following definitions shall apply in this Article:

- (1) Euro. -- The currency of participating member states of the European Union that adopt a single currency in accordance with the Treaty on European Union dated February 7, 1992.
- (2) European Currency Unit (ECU). -- The currency as defined in the European Council regulation number 3320/94.
- (3) Introduction of the Euro. -- The implementation of economic and monetary union of member states of the European Union in accordance with the Treaty on European Union dated February 7, 1992.

"§ 53-296. Continuity of contract.

(a) If a subject of medium of payment of a contract, security, or instrument is a currency that has been substituted or replaced by the euro, the euro shall be a commercially reasonable substitute and substantial equivalent that may either be used in determining the value of that currency, or tendered at the conversion rate specified in and otherwise calculated in accordance with the regulations adopted by the Council of the European Union.

(b) If a subject or medium of payment of a contract, security, or instrument is the ECU, the euro will be a commercially reasonable substitute and substantial equivalent that may be either used in determining the value of that currency, or tendered at the conversion rate specified in and otherwise calculated in accordance with the regulations adopted by the Council of the European Union.

(c) Performance of any of the obligations described in subsection (a) or (b) may be made in the currencies originally designated in the contract, security, or instrument, so long as the currencies remain legal tender, or in euro, but not in any other currency, whether or not the currency has been substituted or replaced by the euro, or is a currency that is considered a denomination of the euro and has a fixed conversion rate with respect to the euro.

"§ 53-297. Effect of currency substitution on performance.

None of the following shall have the effect of discharging or excusing performance under any contract, security, or instrument, or give a party the right unilaterally to alter or terminate any contract, security, or instrument:

- (1) Introduction of the euro.
- (2) Tender of euros in connection with any obligation in compliance with G.S. 53-296.
- (3) Determination of the value of any obligation in compliance with G.S. 53-296.
- (4) Calculation or determination of the subject or medium of payment of a contract, security, or instrument with reference

to an interest rate or other basis that has been substituted or replaced due to the introduction of the euro and that is a commercially reasonable substitute and substantial equivalent.

"§ 53-298. References to ECU in contracts.

(a) References to the ECU in a contract, security, or other instrument that also refers in substance to the definition of the ECU as set forth in G.S. 53-295 shall be replaced by references to the euro at a rate of one euro to one ECU.

(b) References to the ECU in a contract, security, or instrument without a definition as set forth in G.S. 53-295 shall be presumed, rebuttable by proof of the contrary intention of the parties, to be references to the currency basket that is from time to time used as the unit of account of the European community.

"§ 53-299. Application.

Notwithstanding any other law, this Article shall apply to all contracts, securities, and instruments, including contracts with respect to commercial transactions.

"§ 53-300. No application to other currency alteration.

In circumstances of currency alteration other than the introduction of the euro, this Article shall not be interpreted as creating any negative inference or negative presumption regarding the validity or enforceability of contracts, securities, or instruments denominated in whole or in part in a currency affected by that alteration."

Section 2. This act is effective when it becomes law and applies to contracts entered into or issued before, on, or after the effective date.

In the General Assembly read three times and ratified this the 8th day of July, 1999.

Became law upon approval of the Governor at 9:42 p.m. on the 15th day of July, 1999.

H.B. 1069

SESSION LAW 1999-313

AN ACT RECLASSIFYING CERTIFIED CLINICAL SOCIAL WORKERS AS LICENSED CLINICAL SOCIAL WORKERS AND REVISING THE FEES AND QUALIFICATIONS FOR CERTIFICATION AND LICENSURE OF SOCIAL WORKERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90B of the General Statutes reads as rewritten:

"Chapter 90B.

"Social Worker Certification and Licensure Act.

"§ 90B-1. *Short title.*

This Chapter shall be known as the "Social Worker Certification and Licensure Act."

"§ 90B-2. *Purpose.*

Since the profession of social work significantly affects the lives of the people of this State, it is the purpose of this Chapter to protect the public by setting standards for qualification, ~~training~~ training, and experience for those who seek to represent themselves to the public as certified social workers or licensed clinical social workers and by promoting high standards of professional performance for those engaged in the practice of social work.

"§ 90B-3. *Definitions.*

The following definitions apply in this Chapter:

- (1) Board. -- The North Carolina ~~Certification Board for Social Work~~, Social Work Certification and Licensure Board.
- (2) ~~Certified~~ Licensed Clinical Social Worker. -- A person who is competent to function independently, who holds himself or herself out to the public as a social worker, and who offers or provides clinical social work services or supervises others engaging in clinical social work practice.
- (3) Certified Master Social Worker. -- A person who is certified under this Chapter to practice social work as a master social worker and is engaged in the practice of social work.
- (4) Certified Social Work Manager. -- A person who is certified under this Chapter to practice social work as a social work manager and is engaged in the practice of social work.
- (5) Certified Social Worker. -- A person who is certified under this Chapter to practice social work as a social worker and is engaged in the practice of social work.
- (6) Clinical Social Work Practice. -- The professional application of social work theory and methods to the ~~psychosocial~~ biopsychosocial diagnosis, treatment, or prevention, of emotional and mental disorders. Practice ~~includes~~ includes, by whatever means of communications, the treatment of individuals, couples, families, and groups, including the use of psychotherapy and referrals to and collaboration with other health professionals when appropriate. Clinical social work practice shall not include the provision of supportive daily living services to persons with severe and persistent mental illness as defined in G.S. 122C-3(33a).
- (7) ~~Public~~ Practice of Social Work. -- To perform or offer to perform ~~services~~ services, by whatever means of communications, for other people that involve the application of social work values, principles, and techniques in areas such as social work services, consultation and administration, and social work planning and research.
- (8) Social Worker. -- A person engaging in the ~~public~~ practice of social work who is not certified or licensed under this Chapter as a Certified Social Worker, Certified Master Social Worker, ~~Certified~~ Licensed Clinical Social Worker, or Certified Social Work Manager.

"§ 90B-4. *Prohibitions.*

(a) Except as otherwise provided in this Chapter, it is unlawful for any person who is not certified as a social worker, master social worker, or social work manager under this Chapter to represent himself or herself to be certified under this Chapter or hold himself or herself out to the public by any title or description denoting that he or she is certified under this Chapter.

(b) After January 1, 1992, except as otherwise provided in this Chapter, it is unlawful to engage in or offer to engage in the practice of clinical social work without first being certified licensed under this Chapter as a clinical social worker.

(c) Nothing herein shall prohibit school social workers who are certified by the State Board of Education from practicing school social work under the title "Certified School Social Worker." Except as provided for certified licensed clinical social workers, nothing herein shall be construed as prohibiting social workers who are not certified by the Board from practicing social work. Except as provided herein for certified licensed clinical social workers, no agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the legislative, executive or judicial branches of State government or counties, cities, towns, villages, other municipal corporations, political subdivisions of the State, public authorities, private corporations created by act of the General Assembly or any firm or corporation receiving State funds shall require the obtaining or holding of any certificate issued under this Chapter or the taking of an examination held pursuant to this Chapter as a requirement for obtaining or continuing in employment.

(d) Nothing herein shall authorize the practice of medicine as defined in Article 1 of this Chapter or the practice of psychology as defined in Article 18A of this Chapter.

"§ 90B-5. North Carolina ~~Certification Board for Social Work; Social Work Certification and Licensure Board~~; appointments; terms; composition.

(a) For the purpose of carrying out the provisions of this Chapter, there is hereby created the North Carolina ~~Certification Board for Social Work~~ Certification and Licensure Board which shall consist of seven members appointed by the Governor as follows:

- (1) At least two members of the Board shall be Certified Social Workers or Certified Master Social Workers, three members shall be Certified Licensed Clinical Social Workers, and two members shall be appointed from the public at large. Composition of the Board as to the race and sex of its members shall reflect the composition of the population of the State of North Carolina.
- (2) At times the Board shall include at least one member primarily engaged in social work education, at least one member primarily engaged in social work in the public sector, and at least one member primarily engaged in social work in the private sector.

- (3) All members of the Board shall be residents of the State of North Carolina, and with the exception of the public members, shall be certified or licensed by the Board under the provisions of this Chapter. Professional members of the Board must be actively engaged in the practice of social work or in the education and training of students in social work, and have been for at least three years prior to their appointment to the Board. Such activity during the two years preceding the appointment shall have occurred primarily in this State.

(b) The Governor may only remove a member of the Board for neglect of duty, malfeasance, or conviction of a felony or other crime of moral turpitude.

(c) The term of office of each member of the Board shall be three years. No member shall serve more than two consecutive three-year terms. Each term of service on the Board shall expire on the 30th day of June of the year in which the term expires. As the term of a member expires, the Governor shall make the appointment for a full term, or, if a vacancy occurs for any other reason, for the remainder of the unexpired term.

(d) Members of the Board shall receive compensation for their services and reimbursement for expenses incurred in the performance of duties required by this Chapter, at the rates prescribed in G.S. 93B-5.

(e) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix their compensation within the limits of funds available to the Board.

"§ 90B-6. Functions and duties of the ~~Certification~~ Board.

(a) The Board shall administer and enforce the provisions of this Chapter.

(b) The Board shall elect from its membership, a chairperson, a vice-chairperson, and secretary-treasurer, and adopt rules to govern its proceedings. A majority of the membership shall constitute a quorum for all Board meetings.

(c) The Board shall examine and pass on the qualifications of all applicants for certificates and licenses under this Chapter, and shall issue a certificate or license to each successful applicant therefor.

(d) The Board may adopt a seal which may be affixed to all certificates and licenses issued by the Board.

(e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Chapter from the fees which it collects, but in no event shall expenditures exceed the revenues of the Board during any fiscal year. No State appropriations shall be subject to the administration of the Board.

~~(f) The Board shall establish and receive fees not to exceed fifty dollars (\$50.00) for initial or renewal application. Fees for the national written examination shall be the cost of the examination to the Board plus an additional fee not to exceed fifty dollars (\$50.00). The~~

~~fee for late renewal shall not exceed fifteen dollars (\$15.00). The Board shall maintain accounts of all receipts and make expenditures from Board receipts for any purpose which is reasonable and necessary for the proper performance of its duties under this Chapter.~~

(g) The Board shall have the power to establish or approve study or training courses and to establish reasonable standards for ~~certification and certificate renewal~~, certification, licensure, and renewal of certification and licensure, ~~including but not limited to the power to adopt or use examination materials and accreditation standards of the Council on Social Work Education or other recognized accrediting agency and the power to establish reasonable standards for continuing social work education; provided that for certificate and license renewal no examination shall be required; provided further, that the Board shall not have the power to withhold approval of study or training courses offered by a college or university having a social work program approved by the Council on Social Work Education.~~

(h) Subject to the provisions of Chapter 150B of the General Statutes, the Board shall have the power to ~~adopt, amend, or rescind~~ adopt rules and regulations to carry out the purposes of this Chapter, including but not limited to the power to adopt ethical and disciplinary standards.

(i) The Board may order that any records concerning the practice of social work and relevant to a complaint received by the Board or an inquiry or investigation conducted by or on behalf of the Board shall be produced by the custodian of the records to the Board or for inspection and copying by representatives of or counsel to the Board.

"§ 90B-6.1. Board general provisions.

The Board shall be subject to the administrative provisions of Chapter 93B of the General Statutes.

"§ 90B-6.2. Fees.

(a) The Board shall establish fees not exceeding the following amounts:

<u>(1)</u>	<u>All initial applications</u>	<u>\$200.00</u>
<u>(2)</u>	<u>Examination</u>	<u>Cost plus an</u>
		<u>amount not to</u>
		<u>exceed \$40.00</u>
<u>(3)</u>	<u>Repeated examination or any</u>	
	<u>additional examination</u>	<u>Cost plus an</u>
		<u>amount not to</u>
		<u>exceed</u>
		<u>\$40.00</u>
<u>(4)</u>	<u>Renewal applications</u>	<u>200.00</u>
<u>(5)</u>	<u>Late fees for renewal</u>	<u>50.00</u>
<u>(6)</u>	<u>Reinstatement</u>	<u>200.00</u>
<u>(7)</u>	<u>Duplicate license</u>	<u>25.00</u>
<u>(8)</u>	<u>Temporary certificate or license</u>	<u>25.00.</u>

(b) Notwithstanding subdivision (a)(4) of this section, the Board may establish a graduated fee schedule for renewals that is based upon

the applicant's level of certification or licensure. The Board may establish fees for the actual cost of duplication services, materials, and returned bank items. All fees derived from services provided by the Board under the provisions of this Chapter shall be nonrefundable. The Board shall maintain accounts of all receipts to the Board.

"§ 90B-7. Titles and qualifications for ~~certificates~~, certificates and licenses.

(a) Each person desiring to obtain a certificate or license from the Board shall make application to the Board upon such forms and in such manner as the Board shall prescribe, together with the required application fee established by the Board.

(b) The Board shall issue a certificate as "Certified Social Worker" to an applicant ~~who~~; who meets the following qualifications:

- (1) Has a ~~bachelor's bachelors~~ degree in a social work program from a college or university having a social work program accredited or admitted to candidacy for accreditation by the Council on Social Work Education for undergraduate ~~curricula or has a bachelor's degree in a subject area related to human services and has completed a minimum of 18 semester hours of social work training in a social work program accredited or admitted to candidacy for accreditation by the Council on Social Work Education; and curricula.~~
- (2) Has passed the Board examination for the certification of persons in this classification.

(c) The Board shall issue a certificate as "Certified Master Social Worker" to an applicant ~~who~~; who meets the following qualifications:

- (1) Has a ~~master's masters or doctor's doctoral~~ degree in a social work program from a college or university having a social work program approved by the Council on Social Work ~~Education; and Education.~~
- (2) Has passed the Board examination for the certification of persons in this classification.

(d) The Board shall issue a ~~certificate license~~ as a "~~Certified~~ "Licensed Clinical Social Worker" to an applicant ~~who~~; who meets the following qualifications:

- (1) Holds or qualifies for a current certificate as a Certified Master Social ~~Worker; and Worker.~~
- (2) Shows to the satisfaction of the Board that he or she has had two years of clinical social work experience with appropriate supervision in the field of specialization in which the applicant will ~~practice; and practice.~~
- (3) Has passed the Board examination for the ~~certification~~ licensure of persons in this classification.

(e) The Board shall issue a certificate as a "Certified Social Work Manager" to an applicant ~~who~~; who meets the following qualifications:

- (1) Holds or qualifies for a current certificate as a Certified Social ~~Worker; and Worker.~~

- (2) Shows to the satisfaction of the Board that he or she has had two years of experience in an administrative setting with appropriate supervision and ~~training; and training.~~
- (3) Has passed the Board examination for the certification of persons in this classification.

(f) The Board may issue a provisional ~~certificate~~ license in clinical social work to a person who has a ~~master's masters or doctor's doctoral~~ degree in a social work program from a college or university having a social work program approved by the Council on Social Work Education and desires to be ~~certified~~ licensed as a clinical social worker. The provisional ~~certificate~~ license may not be issued for a period exceeding two years and the person issued the provisional ~~certificate~~ license must practice under the supervision of a ~~certified~~ licensed clinical social worker or a Board-approved alternate.

"§ 90B-8. *Persons from other jurisdictions.*

(a) The Board may grant a ~~certificate or~~ license without examination or by special examination to any person who, at the time of application, is certified, registered or licensed as a social worker by a similar board of another country, state, or territory whose certification, registration or licensing standards are substantially equivalent to those required by this Chapter. The applicant shall have passed an examination in the country, state, or territory in which he or she is certified, registered, or licensed that is equivalent to the examination required for the level of certification or licensure sought in this State.

(b) The Board may issue a temporary license to a nonresident clinical social worker who is either certified, registered, or licensed in another jurisdiction whose standards, in the opinion of the Board, at the time of the person's certification, registration, or licensure were substantially equivalent to or higher than the requirements of this Chapter. Nothing in this Chapter shall be construed as prohibiting a nonresident clinical social worker certified, registered, or licensed in another state from rendering professional clinical social work services in this State for a period of not more than five days in any calendar year. All persons granted a temporary clinical social worker license shall comply with the supervision requirements established by the Board.

"§ 90B-9. *Renewal of ~~certificates.~~ certificates and licenses.*

(a) All certificates and licenses shall be effective upon date of issuance by the Board, and shall ~~expire~~ be renewed on or before the second June 30 thereafter.

(b) All certificates and licenses issued hereunder shall be renewed at the times and in the manner provided by this section. At least 45 days prior to expiration of each ~~certificate,~~ certificate or license, the Board shall mail a notice and application for certificate renewal to the ~~person certified for the current certification period.~~ certificate holder or licensee. Prior to the expiration date, the ~~applicant must return the notice~~ application shall be returned properly completed, together with a renewal fee established by the Board pursuant to G.S. 90B-6.2(a)(5) and evidence of completion of the continuing education requirements established by the Board ~~under~~ pursuant to G.S. 90B-6(g), upon receipt of which the Board shall ~~issue to the person to be certified the renewed certificate for the period stated on the certificate.~~

renew the certificate or license. If a certificate or license is not renewed on or before the expiration date, an additional fee shall be charged for late renewal as provided in G.S. 90B-6.2(a)(6).

(c) Any person certified who allows his certificate to lapse for failure to apply for renewal within 45 days after notice shall have his or her certificate automatically suspended, and be subject to a late renewal fee as established pursuant to G.S. 90B-6(f), and if he or she fails to apply for renewal of a certificate within one year after date of such suspension, the certificate shall lapse and may be reissued only upon application as for an original certificate. A certificate or license issued under this Chapter shall be automatically suspended for failure to renew for a period of more than 60 days after the renewal date. The Board may reinstate a certificate or license suspended under this subsection upon payment of a reinstatement fee as provided in G.S. 90B-6.2(a)(7) and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his or her credentials, or submit to examination for reinstatement. The Board shall have exclusive jurisdiction to investigate alleged violations of this Chapter by any person whose certificate or license has been suspended under this subsection and, upon proof of any violation of this Chapter, the Board may take disciplinary action as provided in G.S. 90B-11.

(d) Any person certified or licensed and desiring to retire temporarily from the practice of social work shall send written notice thereof to the Board. Upon receipt of such notice, his or her name shall be placed upon the nonpracticing list and he or she shall not be subject to payment of renewal fees. fees while temporarily retired. In order to renew certification, application for renewal shall be made in ordinary course with a renewal fee for the current period. reinstate certification or licensure, the person shall apply to the Board by making a request for reinstatement and paying the appropriate fee as provided in G.S. 90B-6.2.

"§ 90B-10. Exemption from certain requirements.

(a) Applicants who were engaged in the practice of social work before January 1, 1984, shall be exempt from the academic qualifications required by this act for Certified Social Workers and Certified Social Work Managers and shall be certified upon passing the Board examination and meeting the experience requirements, if any, for certification of persons in that classification.

(b) The following may engage in clinical social work practice without meeting the requirements of G.S. 90B-7(d):

- (1) A person who has engaged in clinical social work practice for one year prior to the effective date of this act and who properly applies for and pays the required fees for a certificate as a certified clinical social worker prior to January 1, 1993. Notwithstanding the foregoing provision of this subdivision, any applicant who applied for certification pursuant to this subdivision between December 1, 1993, and January 15, 1994, and who is otherwise eligible for certification under this subdivision but for the January 1, 1993, deadline shall be certified.
- (2) A student completing a clinical requirement for graduation while pursuing a course of study in social work in an institution

accredited by or in candidacy status with the Council on Social Work Education.

- (3) An employee engaged in clinical social work practice exclusively for one of the following employers:
 - a. (Effective until January 1, 1999) The State, a political subdivision of the State, or a local government.
 - b. A hospital or health care facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes or Articles 5 and 6 of Chapter 131E of the General Statutes.

"§ 90B-11. Disciplinary procedures.

(a) The Board may, in accordance with the provisions of Chapter 150B of the General Statutes, ~~refuse to grant or to renew, may suspend, or may revoke the certificate of any person certified under this Chapter on the following grounds:~~ deny, suspend, or revoke an application, certificate, or license on any of the following grounds:

- (1) Conviction of a misdemeanor or the entering of a plea of guilty or nolo contendere to a misdemeanor under this Chapter; or Chapter.
- (2) Conviction of a felony or the entering of a plea of guilty or nolo contendere to a felony under the laws of the United States or of any state of the United States; ~~or States.~~
- (3) Gross unprofessional conduct, dishonest practice or incompetence in the practice of social work; ~~or work.~~
- (4) Procuring or attempting to procure a certificate or license by fraud, deceit, or ~~misrepresentation; or misrepresentation.~~
- (5) Any fraudulent or dishonest conduct in social work; ~~or work.~~
- (6) Inability of the person to perform the functions for which he or she is certified, certified or licensed, or substantial impairment of abilities by reason of physical or mental disability; or disability.
- (7) Violations of any of the provisions of this Chapter or of rules of the Board.

(b) Upon proof that an applicant, certificate holder, or licensee under this Chapter has engaged in any of the prohibited actions specified in subsection (a) of this section, the Board may, in lieu of denial, suspension, or revocation, take one or more of the following actions:

- (1) Issue a reprimand or censure.
- (2) Order probation with conditions deemed appropriate by the Board.
- (3) Require examination, remediation, or rehabilitation, including care, counseling, or treatment by a professional designated or approved by the Board, the cost of which shall be borne by the applicant, certificate holder, or licensee.
- (4) Require supervision for the services provided by the applicant, certificate holder, or licensee by a certified or licensed social worker designated and approved by the

Board, the cost of which shall be borne by the applicant, certificate holder, or licensee.

- (5) Limit or circumscribe the practice of social work provided by the applicant, certificate holder, or licensee with respect to the extent, nature, or location of the services provided.

(c) The Board may impose conditions of probation or restrictions upon continued practice at the conclusion of a period of suspension or as a requirement for the restoration of a revoked or suspended certificate or license. Instead of or in connection with any disciplinary proceeding or investigation, the Board may enter into a consent order with an applicant, certificate holder, or licensee relative to a discipline, supervision, probation, remediation, rehabilitation, or practice limitation.

(d) In considering whether an applicant, certificate holder, or licensee is mentally or physically capable of practicing social work with reasonable skill and safety, the Board may require an applicant, certificate holder, or licensee to submit to a mental examination by a licensed clinical social worker or other licensed mental health professional designated by the Board and to a physical examination by a physician or other licensed health professional designated by the Board. The examination may be ordered by the Board before or after charges are presented against the applicant, certificate holder, or licensee and the results of the examination shall be reported directly to the Board and shall be admissible in evidence in a hearing before the Board.

(e) The Board shall provide the opportunity for a hearing under Article 3A of Chapter 150B of the General Statutes to: (i) any person whose certification or licensure was denied or granted subject to restrictions, probation, disciplinary action, remediation, or other conditions or limitations; and (ii) any certificate holder or licensee before revoking or suspending his or her certificate or license or restricting his or her practice or imposing any other disciplinary action or remediation. If the applicant, certificate holder, or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other action shall be final. No applicant, certificate holder, or licensee shall be entitled to a hearing for failure to pass a qualifying examination.

(f) In any proceeding before the Board, complaint or notice of charges against any applicant, certificate holder, or licensee, and any decision rendered by the Board, the Board may withhold from public disclosure the identity of any client who has not consented to the public disclosure of social work services provided to him or her by the applicant, certificate holder, or licensee. If necessary for the protection and rights of a client and the full presentation of relevant evidence, the Board may close a hearing to the public and receive evidence involving or concerning the delivery of social work services.

(g) Records, papers, and other documents containing information collected and compiled by or on behalf of the Board as a result of an investigation, inquiry, or interview conducted in connection with

certification, licensure, or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Any notice or statement of charges, notice of hearing, or decision rendered in connection with a hearing, shall be a public record. Information that identifies a client who has not consented to the public disclosure of services rendered to him or her by a person certified or licensed under this Chapter shall be deleted from the public record. All other records, papers, and documents containing information collected and compiled by or on behalf of the Board shall be public records, but any information that identifies a client who has not consented to the public disclosure of services rendered to him or her shall be deleted.

"§ 90B-12. *Violation a misdemeanor.*

Any person violating any provision of this Chapter is guilty of a Class 2 misdemeanor.

"§ 90B-13. *Injunction.*

As an additional remedy, the Board may proceed in a superior court to enjoin and restrain any person from violating the prohibitions of this Chapter. The Board shall not be required to post bond in connection with such proceeding.

"§ 90B-14. *Third-party reimbursements.*

Nothing in this Chapter shall be construed to authorize or require direct third-party reimbursement to persons certified under this Chapter."

Section 2. This act becomes effective July 1, 1999.

In the General Assembly read three times and ratified this the 8th day of July, 1999.

Became law upon approval of the Governor at 9:46 p.m. on the 15th day of July, 1999.

H.B. 1090

SESSION LAW 1999-314

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE AN INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS SPECIAL REGISTRATION PLATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. -- The Division shall issue the following types of special registration plates:

(19a) International Association of Fire Fighters. -- Issuable to a member of the International Association of Fire Fighters. The plate shall bear the logo of the International Association of Fire Fighters. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 1999.

Became law upon approval of the Governor at 9:47 p.m. on the 15th day of July, 1999.

H.B. 1237

SESSION LAW 1999-315

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF LANDSCAPE ARCHITECTS TO CHARGE APPLICANTS FOR LICENSURE THE ACTUAL COST OF EXAMINATION SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89A-6 reads as rewritten:

"§ 89A-6. Fees.

Fees are to be determined by the Board, but shall not exceed the amounts specified herein, however; fees must reflect actual expenses of the Board.

Application	\$100.00
Examination	450.00
License by reciprocity or comity	250.00
Annual license renewal	100.00
Late renewal penalty	50.00
Reissue of certificate	25.00
Corporate certificate	250.00

In all instances where the Board uses the services of a testing service for preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services, in addition to its other fees. Fees shall be paid to the Board at the times specified by the Board."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 1999.

Became law upon approval of the Governor at 9:49 p.m. on the 15th day of July, 1999.

H.B. 319

SESSION LAW 1999-316

AN ACT TO AUTHORIZE THE SECRETARY OF STATE TO APPLY FOR AND ACCEPT GRANT FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-36 reads as rewritten:

"§ 147-36. *Duties of Secretary of State.*

It is the duty of the Secretary of State:

(1) To perform such duties as may then be devolved upon the Secretary by resolution of the two houses of the General Assembly or either of them;

(2) To attend the Governor, whenever required by the Governor, for the purpose of receiving documents which have passed the great seal;

(3) To receive and keep all conveyances and mortgages belonging to the State;

(4) To distribute annually the statutes and the legislative journals;

(5) To distribute the acts of Congress received at the Secretary's office in the manner prescribed for the statutes of the State;

(6) To keep a receipt book, in which the Secretary shall take from every person to whom a grant shall be delivered, a receipt for the same; but may inclose grants by mail in a registered letter at the expense of the grantee, unless otherwise directed, first entering the same upon the receipt book;

(7) To issue charters and all necessary certificates for the incorporation, domestication, suspension, reinstatement, cancellation and dissolution of corporations as may be required by the corporation laws of the State and maintain a record thereof;

(8) To issue certificates of registration of trademarks, labels and designs as may be required by law and maintain a record thereof;

(9) To maintain a Division of Publications to compile data on the State's several governmental agencies and for legislative reference;

(10) To receive, enroll and safely preserve the Constitution of the State and all amendments thereto;

(11) To serve as a member of such boards and commissions as the Constitution and laws of the State may designate;

(12) To administer the Securities Law of the State, regulating the issuance and sale of securities, as is now or may be directed;

(13) To receive and keep all oaths of public officials required by law to be filed in the Secretary's office, and as Secretary of State, is fully empowered to administer official oaths to any public official of whom an oath is required;

(14) To receive and maintain a journal of all appointments made to any State board, agency, commission, council or authority which is filed in the office of the Secretary of State; and

(15) To regulate the solicitation of contributions pursuant to Chapter 131F of the General Statutes; and

(16) To apply for and accept grants from the federal government and its agencies and from any foundation, corporation, association, or individual in order to effectuate the purposes of the Nonprofit Corporation Act, Chapter 55A of the General Statutes, and to further aid in the operation and development of nonprofit corporations. The Secretary shall comply with the terms, conditions, and limitations of grants applied for and accepted and shall expend grant funds pursuant to Article 1 of Chapter 143 of the General Statutes, The Executive Budget Act."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 8th day of July, 1999.

Became law upon approval of the Governor at 9:52 p.m. on the 15th day of July, 1999.

S.B. 942

SESSION LAW 1999-317

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO DEVELOP PLANS FOR IMPLEMENTING THE STATEWIDE STUDENT ACCOUNTABILITY STANDARDS POLICY AND TO IDENTIFY RESOURCES TO ENSURE APPROPRIATE EARLY AND ONGOING ASSISTANCE FOR STUDENTS WHO NEED ASSISTANCE.

The General Assembly of North Carolina enacts:

Section 1. The Statewide Student Accountability Standards, as approved by the North Carolina State Board of Education April 1, 1999, under APA Policy 16CAC6D.0305, are predicated on the belief in the need to provide early and ongoing assistance to students who need it, and that all students shall have the reading and mathematics skills critical for participating in and benefiting from high school curricula in core academic and vocational areas. It is the intent of the General Assembly that Statewide Student Accountability Standards be implemented and that resources be identified and made available to provide necessary and appropriate early and ongoing assistance that will lead to academic success for students.

The State Board of Education shall develop plans for implementing the policy, including identification and quantification of federal, State, local governmental resources and private resources, and utilization plans for those resources so as to ensure appropriate early and ongoing assistance for students who need that assistance. The State Board of Education shall report those plans and progress in implementing those plans quarterly to the Joint Legislative Education Oversight Committee, the House and Senate Appropriations Subcommittees on Education/Higher Education, and the Joint Legislative Commission on Governmental Operations commencing October 1, 1999, through July 1, 2000.
law.

In the General Assembly read three times and ratified this the 8th day of July, 1999.

Became law upon approval of the Governor at 9:56 p.m. on the 15th day of July, 1999.

H.B. 1159

SESSION LAW 1999-318

AN ACT TO IMPROVE THE ABILITY OF THE DIVISION OF SOCIAL SERVICES, DEPARTMENT OF HEALTH AND HUMAN SERVICES, TO PROTECT CHILDREN AND YOUTH FROM VIOLENCE-PRONE CAREGIVERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-101, as enacted by Section 6 of S.L. 1998-202 and as amended by Section 18 of S.L. 1998-229, is amended by adding a new subdivision to read:

"(7a) 'Criminal history' means a local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person.'"

Section 2. G.S. 7B-302, as enacted by Section 6 of S.L. 1998-202 and as amended by Section 19 of S.L. 1998-229, is amended by adding a new subsection to read:

"(d1) Whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director shall conduct a thorough review of the background of the alleged abuser or abusers. This review shall include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser or abusers have a history of violent behavior against people, the director shall petition the court to order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.'"

Section 3. G.S. 7B-304, as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"§ 7B-304. *Evaluation for court.*

In all cases in which a petition is filed, the director of the department of social services shall prepare a report for the court containing the results of any mental health evaluation under G.S. 7B-503, a home placement plan, and a treatment plan deemed by the director to be appropriate to the needs of the juvenile. The report shall be available to the court immediately following the adjudicatory hearing."

Section 4. G.S. 7B-503, as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"§ 7B-503. *Criteria for nonsecure custody.*

(a) When a request is made for nonsecure custody, the court shall first consider release of the juvenile to the juvenile's parent, relative, guardian, custodian, or other responsible adult. An order for nonsecure custody shall be made only when there is a reasonable factual basis to believe the matters alleged in the petition are true, and

- (1) The juvenile has been abandoned; or
- (2) The juvenile has suffered physical injury or sexual abuse; or
- (3) The juvenile is exposed to a substantial risk of physical injury or sexual abuse because the parent, guardian, custodian, or caretaker has created the conditions likely to cause injury or abuse or has failed to provide, or is unable to provide, adequate supervision or protection; or
- (4) The juvenile is in need of medical treatment to cure, alleviate, or prevent suffering serious physical harm which may result in death, disfigurement, or substantial

impairment of bodily functions, and the juvenile's parent, guardian, custodian, or caretaker is unwilling or unable to provide or consent to the medical treatment; or

- (5) The parent, guardian, custodian, or caretaker consents to the nonsecure custody order; or
- (6) The juvenile is a runaway and consents to nonsecure custody.

A juvenile alleged to be abused, neglected, or dependent shall be placed in nonsecure custody only when there is a reasonable factual basis to believe that there are no other reasonable means available to protect the juvenile. In no case shall a juvenile alleged to be abused, neglected, or dependent be placed in secure custody.

(b) Whenever a petition is filed under G.S. 7B-302(d1), the court shall rule on the petition prior to returning the child to a home where the alleged abuser or abusers are or have been present. If the court finds that the alleged abuser or abusers have a history of violent behavior against people, the court shall order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist. The court may order the alleged abuser or abusers to pay the cost of any mental health evaluation required under this section."

Section 5. G.S. 7B-506, as enacted by Section 6 of S.L. 1998-202 and as amended by Section 21 of S.L. 1998-229, is amended by adding a new subsection to read:

"(c1) In determining whether continued custody is warranted, the court shall consider the opinion of the mental health professional who performed an evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual."

Section 6. G.S. 7B-903, as enacted by Section 6 of S.L. 1998-202 and as amended by Section 23 of S.L. 1998-229, reads as rewritten:

"§ 7B-903. Dispositional alternatives for abused, neglected, or dependent juvenile.

(a) The following alternatives for disposition shall be available to any court exercising jurisdiction, and the court may combine any of the applicable alternatives when the court finds the disposition to be in the best interests of the juvenile:

- (1) The court may dismiss the case or continue the case in order to allow the parent, guardian, custodian, caretaker or others to take appropriate action.
- (2) In the case of any juvenile who needs more adequate care or supervision or who needs placement, the court may:
 - a. Require that the juvenile be supervised in the juvenile's own home by the department of social services in the juvenile's county, or by other personnel as may be available to the court, subject to conditions applicable to the parent, guardian, custodian, or caretaker as the court may specify; or

- b. Place the juvenile in the custody of a parent, relative, private agency offering placement services, or some other suitable person; or
- c. Place the juvenile in the custody of the department of social services in the county of the juvenile's residence, or in the case of a juvenile who has legal residence outside the State, in the physical custody of the department of social services in the county where the juvenile is found so that agency may return the juvenile to the responsible authorities in the juvenile's home state. The director may, unless otherwise ordered by the court, arrange for, provide, or consent to, needed routine or emergency medical or surgical care or treatment. In the case where the parent is unknown, unavailable, or unable to act on behalf of the juvenile, the director may, unless otherwise ordered by the court, arrange for, provide, or consent to any psychiatric, psychological, educational, or other remedial evaluations or treatment for the juvenile placed by a court or the court's designee in the custody or physical custody of a county department of social services under the authority of this or any other Chapter of the General Statutes. Prior to exercising this authority, the director shall make reasonable efforts to obtain consent from a parent or guardian of the affected juvenile. If the director cannot obtain such consent, the director shall promptly notify the parent or guardian that care or treatment has been provided and shall give the parent frequent status reports on the circumstances of the juvenile. Upon request of a parent or guardian of the affected juvenile, the results or records of the aforementioned evaluations, findings, or treatment shall be made available to such parent or guardian by the director unless prohibited by G.S. 122C-53(d). If a juvenile is removed from the home and placed in custody or placement responsibility of a county department of social services, the director shall not allow unsupervised visitation with, or return physical custody of the juvenile to, the parent, guardian, custodian, or caretaker without a hearing at which the court finds that the juvenile will receive proper care and supervision in a safe home.

In placing a juvenile in out-of-home care under this section, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile in a safe home. If the court finds that the relative is willing and able to provide proper care and supervision in a safe home, then the court shall order placement of the juvenile with the relative unless the court finds that the placement is

contrary to the best interests of the juvenile. Placement of a juvenile with a relative outside of this State must be in accordance with the Interstate Compact on the Placement of Children.

- (3) In any case, the court may order that the juvenile be examined by a physician, psychiatrist, psychologist, or other qualified expert as may be needed for the court to determine the needs of the juvenile:
 - a. Upon completion of the examination, the court shall conduct a hearing to determine whether the juvenile is in need of medical, surgical, psychiatric, psychological, or other treatment and who should pay the cost of the treatment. The county manager, or such person who shall be designated by the chairman of the county commissioners, of the juvenile's residence shall be notified of the hearing, and allowed to be heard. If the court finds the juvenile to be in need of medical, surgical, psychiatric, psychological, or other treatment, the court shall permit the parent or other responsible persons to arrange for treatment. If the parent declines or is unable to make necessary arrangements, the court may order the needed treatment, surgery, or care, and the court may order the parent to pay the cost of the care pursuant to G.S. 7B-904. If the court finds the parent is unable to pay the cost of treatment, the court shall order the county to arrange for treatment of the juvenile and to pay for the cost of the treatment. The county department of social services shall recommend the facility that will provide the juvenile with treatment.
 - b. If the court believes, or if there is evidence presented to the effect that the juvenile is mentally ill or is developmentally disabled, the court shall refer the juvenile to the area mental health, developmental disabilities, and substance abuse services director for appropriate action. A juvenile shall not be committed directly to a State hospital or mental retardation center; and orders purporting to commit a juvenile directly to a State hospital or mental retardation center except for an examination to determine capacity to proceed shall be void and of no effect. The area mental health, developmental disabilities, and substance abuse director shall be responsible for arranging an interdisciplinary evaluation of the juvenile and mobilizing resources to meet the juvenile's needs. If institutionalization is determined to be the best service for the juvenile, admission shall be with the voluntary consent of the parent or guardian. If the parent, guardian, custodian, or caretaker refuses to consent to a mental hospital or retardation center admission after such institutionalization

is recommended by the area mental health, developmental disabilities, and substance abuse director, the signature and consent of the court may be substituted for that purpose. In all cases in which a regional mental hospital refuses admission to a juvenile referred for admission by a court and an area mental health, developmental disabilities, and substance abuse director or discharges a juvenile previously admitted on court referral prior to completion of treatment, the hospital shall submit to the court a written report setting out the reasons for denial of admission or discharge and setting out the juvenile's diagnosis, indications of mental illness, indications of need for treatment, and a statement as to the location of any facility known to have a treatment program for the juvenile in question.

(b) When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior against people, the court shall consider the opinion of the mental health professional who performed an evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual."

Section 7. G.S. 7B-904, as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"§ 7B-904. Authority over parents of juvenile adjudicated as abused, neglected, or dependent.

(a) If the court orders medical, surgical, psychiatric, psychological, or other treatment pursuant to G.S. 7B-903, the court may order the parent or other responsible parties to pay the cost of the treatment or care ordered.

(b) At the dispositional hearing or a subsequent hearing in the case of a juvenile who has been adjudicated abused, neglected, or dependent, if the court finds that it is in the best interests of the juvenile for the ~~parent~~ parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care to be directly involved in the juvenile's treatment, the court may order the ~~parent~~ parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care to participate in medical, psychiatric, psychological, or other treatment of the juvenile. The cost of the treatment shall be paid pursuant to G.S. 7B-903.

(c) At the dispositional hearing or a subsequent hearing in the case of a juvenile who has been adjudicated abused, neglected, or dependent, the court may determine whether the best interests of the juvenile require that the ~~parent~~ parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care undergo psychiatric, psychological, or other treatment or counseling directed toward remediating or remedying behaviors or conditions that led to or contributed to the juvenile's adjudication or to the court's decision to

remove custody of the juvenile from the ~~parent~~ parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care. If the court finds that the best interests of the juvenile require the ~~parent~~ parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care undergo treatment, it may order ~~the parent~~ that individual to comply with a plan of treatment approved by the court or condition legal custody or physical placement of the juvenile with the ~~parent~~ parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care upon ~~the parent's~~ that individual's compliance with the plan of treatment. The court may order the ~~parent~~ parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care to pay the cost of treatment ordered pursuant to this subsection. In cases in which the court has conditioned legal custody or physical placement of the juvenile with the ~~parent~~ parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care upon ~~the parent's~~ compliance with a plan of treatment, the court may charge the cost of the treatment to the county of the juvenile's residence if the court finds the ~~parent~~ parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care is unable to pay the cost of the treatment. In all other cases, if the court finds the ~~parent~~ parent, guardian, custodian, stepparent, adult member of the juvenile's household, or adult relative entrusted with the juvenile's care is unable to pay the cost of the treatment ordered pursuant to this subsection, the court may order ~~the parent~~ that individual to receive treatment currently available from the area mental health program that serves the parent's catchment area.

(d) Whenever legal custody of a juvenile is vested in someone other than the juvenile's parent, after due notice to the parent and after a hearing, the court may order that the parent pay a reasonable sum that will cover, in whole or in part, the support of the juvenile after the order is entered. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c). If the court places a juvenile in the custody of a county department of social services and if the court finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof.

(e) Failure of a parent who is personally served to participate in or comply with this section may result in a proceeding for civil contempt."

Section 8. G.S. 7B-1003, as enacted by Section 6 of S.L. 1998-202, reads as rewritten:

"§ 7B-1003. *Disposition pending appeal.*

Pending disposition of an appeal, the return of the juvenile to the custody of the parent or guardian of the juvenile, with or without conditions, should issue in every case unless the court orders otherwise. When the court has found that a juvenile has suffered physical abuse and that the individual responsible for the abuse has a history of violent behavior, the court shall consider the opinion of the mental health professional who performed the evaluation under G.S. 7B-503(b) before returning the juvenile to the custody of that individual. For compelling reasons which must be stated in writing, the court may enter a temporary order affecting the custody or placement of the juvenile as the court finds to be in the best interests of the juvenile or the State. The provisions of subsections (b), (c), and (d) of G.S. 7B-905 shall apply to any order entered under this section which provides for the placement or continued placement of a juvenile in foster care."

Section 9. This act becomes effective October 1, 1999, and applies to petitions filed on or after that date.

In the General Assembly read three times and ratified this the 8th day of July, 1999.

Became law upon approval of the Governor at 9:59 p.m. on the 15th day of July, 1999.

S.B. 515

SESSION LAW 1999-319

AN ACT TO INCREASE THE NUMBER OF PAID MEMBERS A FIRE DEPARTMENT MAY HAVE AND REMAIN ELIGIBLE TO RECEIVE GRANTS FROM THE VOLUNTEER FIRE DEPARTMENT FUND AND TO INCREASE THE NUMBER OF PAID MEMBERS A RESCUE OR RESCUE/EMS UNIT MAY HAVE AND REMAIN ELIGIBLE TO RECEIVE GRANTS FROM THE VOLUNTEER RESCUE/EMS FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-87-1(b) reads as rewritten:

"(b) A fire department is eligible for a grant under this section if it meets all of the following conditions:

- (1) It serves a response area of 6,000 or less in population.
- (2) ~~It has no more than two paid members and otherwise consists of volunteer members.~~ It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of three full-time paid positions.

- (3) It has been certified by the Department of Insurance.

In making the population determination under subdivision (1), the Department shall use the most recent annual population estimates certified by the State Planning Officer."

Section 2. G.S. 58-87-5(b) reads as rewritten:

"(b) A rescue or rescue/EMS unit is eligible for a grant under this section if it meets all of the following conditions:

- (1) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1066, s. 33(a).
- (2) ~~It has no more than two paid members and otherwise consists of volunteer members.~~ It consists entirely of volunteer members, with the exception that the unit may have paid members to fill the equivalent of three full-time paid positions.
- (3) It has been recognized by the Department as an organization that provides rescue or rescue and emergency medical services.
- (4) It satisfies the eligibility criteria established by the Department under subsection (a) of this section."

Section 3. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 12th day of July, 1999.

Became law upon approval of the Governor at 10:01 p.m. on the 15th day of July, 1999.

S.B. 951

SESSION LAW 1999-320

AN ACT TO PROTECT PATIENTS' RIGHTS BY REQUIRING NAME BADGES OR OTHER IDENTIFICATION FOR HEALTH CARE PRACTITIONERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 37.

"Health Care Practitioner Identification.

"§ 90-640. Identification badges required.

(a) For purposes of this section, 'health care practitioner' means an individual who is licensed, certified, or registered to engage in the practice of medicine, nursing, dentistry, pharmacy, or any related occupation involving the direct provision of health care to patients.

(b) When providing health care to a patient, a health care practitioner shall wear a badge or other form of identification displaying in readily visible type the individual's name and the license, certification, or registration held by the practitioner. If the identity of the individual's license, certification, or registration is commonly expressed by an abbreviation rather than by full title, that abbreviation may be used on the badge or other identification.

(c) The badge or other form of identification is not required to be worn if the patient is being seen in the health care practitioner's office and, the name and license of the practitioner can be readily determined by the patient from a posted license, a sign in the office, a brochure provided to patients, or otherwise.

(d) Each licensing board or other regulatory authority for health care practitioners may adopt rules for exemptions from wearing a badge or other form of identification, or for allowing use of the

practitioner's first name only, when necessary for the health care practitioner's safety or for therapeutic concerns.

(e) Violation of this section is a ground for disciplinary action against the health care practitioner by the practitioner's licensing board or other regulatory authority."

Section 2. G.S. 90-171.43 reads as rewritten:

"§ 90-171.43. *License required.*

~~No person shall practice or offer to practice as or use any card, title or abbreviation to indicate that such person is a registered nurse or licensed practical nurse unless that person is currently licensed as provided by this Article. No person shall practice or offer to practice as a registered nurse or licensed practical nurse, or use the word 'nurse' as a title for herself or himself, or use an abbreviation to indicate that the person is a registered nurse or licensed practical nurse, unless the person is currently licensed as a registered nurse or licensed practical nurse as provided by this Article. If the word 'nurse' is part of a longer title, such as 'nurse's aide', a person who is entitled to use that title shall use the entire title and may not abbreviate the title to 'nurse'. This Article shall not, however, be construed to prohibit or limit the following:~~

- (1) The performance by any person of any act for which that person holds a license issued pursuant to North Carolina law;
- (2) The clinical practice by students enrolled in approved nursing programs, continuing education programs, or refresher courses under the supervision of qualified faculty;
- (3) The performance of nursing performed by persons who hold a temporary license issued pursuant to G.S. 90-171.33;
- (4) The delegation to any person, including a member of the patient's family, by a physician licensed to practice medicine in North Carolina, a licensed dentist or registered nurse of those patient-care services which are routine, repetitive, limited in scope that do not require the professional judgment of a registered nurse or licensed practical nurse;
- (5) Assistance by any person in the case of emergency.

Any person permitted to practice nursing without a license as provided in subdivision (2) or (3) of this section shall be held to the same standard of care as any licensed nurse."

Section 3. This act becomes effective October 1, 1999, but from October 1, 1999, to October 1, 2001, all health care practitioners are required to wear name badges only. Effective October 1, 2001, all health care practitioners shall be in full compliance with this act.

In the General Assembly read three times and ratified this the 12th day of July, 1999.

Became law upon approval of the Governor at 10:05 p.m. on the 15th day of July, 1999.

H.B. 275

SESSION LAW 1999-321

AN ACT TO IMPLEMENT A ZERO UNEMPLOYMENT INSURANCE TAX RATE FOR MORE EMPLOYERS WITH POSITIVE EXPERIENCE RATINGS, AND TO TEMPORARILY REDUCE THE UNEMPLOYMENT INSURANCE TAX BY TWENTY PERCENT FOR MOST EMPLOYERS AND SUBSTITUTE AN EQUIVALENT CONTRIBUTION TO FUND ENHANCED EMPLOYMENT SERVICES AND WORKER TRAINING PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(b)(3)d3. reads as rewritten:

"d3. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, ~~1995~~, 1999, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars (\$800,000,000) on the computation date and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars (\$800,000,000) on the computation date, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As But

Much Less

As	Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.70%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%
0.2%	0.4%	2.70%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%
0.4%	0.6%	2.70%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%
0.6%	0.8%	2.70%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%
0.8%	1.0%	2.50%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%
1.0%	1.2%	2.30%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%
1.2%	1.4%	2.10%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%
1.4%	1.6%	1.90%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%
1.6%	1.8%	1.70%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%

1.8%	2.0%	1.50%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%
2.0%	2.2%	1.30%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%
2.2%	2.4%	1.10%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%
2.4%	2.6%	0.90%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%
2.6%	2.8%	0.80%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%
2.8%	3.0%	0.70%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%
3.0%	3.2%	0.60%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%
3.2%	3.4%	0.50%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%
3.4%	3.6%	0.40%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%
3.6%	3.8%	0.30%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%
3.8%	4.0%	0.20%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%
4.0%	4.2%	0.15%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%
4.2%	4.4%	0.10%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%
4.4%	4.6%	0.09%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%
4.6%	4.8%	0.08%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%	0.01%
4.8%	5.0%	0.07%	0.06%	0.05%	0.04%	0.03%	0.02%	0.01%	0.01%	0.01%
4.0%										
&										
OVER	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

Section 2. Article 2 of Chapter 96 of the General Statutes is amended by adding a new section to read:

§ 96-6.1. Training and reemployment contribution.

(a) Contribution. -- A mandatory training and reemployment contribution is levied upon employers at a percentage rate of the amount of the employer's unemployment insurance contributions due under G.S. 96-9. The rate is the lesser of (i) twenty percent (20%) or (ii) a percentage of the unemployment insurance contributions that yields an amount that, when added to the amount of the employer's unemployment insurance contributions due for the taxable period, is no greater than five and seven-tenths percent (5.7%) of wages for employment for the taxable period. The purpose of the training and reemployment contribution is to provide funds for Department of Community College training programs, Employment Security Commission reemployment services, administration and collection of the new contribution, and other needs of the State. The training and reemployment contribution is due and payable at the time and in the same manner as the unemployment insurance contributions under G.S. 96-9. The training and reemployment contribution does not apply in a calendar year if, as of August 1 of the preceding year, the amount in the Unemployment Insurance Fund equals or is less than eight hundred million dollars (\$800,000,000). The collection of the training and reemployment contribution, the assessment of interest and penalties on unpaid contributions under this section, the filing of judgment liens, and the enforcement of the liens for unpaid contributions under this section are governed by the provisions of G.S. 96-10 where applicable.

Training and reemployment contributions collected under this section shall be credited to the Employment Security Commission Training and Employment Account created in this section, and refunds of these contributions shall be paid from the same account. Any

interest or penalties collected on unpaid contributions under this section shall be credited to the Special Employment Security Administration Fund, and any interest or penalties refunded on contributions imposed by this section shall be paid from the same Fund.

(b) Training and Employment Account. -- There is created in the State treasury a special account separate and apart from all other public moneys or funds of this State, to be known as the Employment Security Commission Training and Employment Account. The State Treasurer is ex officio the treasurer and custodian of the Account and shall invest its funds in accordance with law. Any interest or other income derived from the Account shall be credited to the Account. Funds in the Account may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The Account is subject to the provisions of the Executive Budget Act, except that no unexpended surplus of the Account shall revert to the General Fund. Funds appropriated from the Account that are unexpended and unencumbered at the end of the fiscal year for which they were appropriated shall revert to the credit of the Account in the State treasury in accordance with G.S. 143-18.

It is the intent of the General Assembly that eighty percent (80%) of the funds in the Account shall be appropriated annually to the Department of Community Colleges to be used for nonrecurring expenditures to provide worker training through improved continuing education, acquisition of modern training equipment, operation of specialized training centers, enhancement of small business center training, expansion of training for new and expanding industries, incentive grants for incumbent worker training, programs funded by the Worker Training Trust Fund, and other programs of the Department of Community Colleges. It is the intent of the General Assembly that twenty percent (20%) of the funds in the Account shall be appropriated annually to the Employment Security Commission for administration and collection of the training and reemployment contribution and for nonrecurring expenditures for reemployment services."

Section 3. G.S. 96-9(c)(4)b. reads as rewritten:

- "b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, ~~his~~ the successor's rate of contribution for the period from ~~such~~ that date to the end of the then current contribution year shall be the same as ~~his~~ the successor's rate in effect on the date of ~~such~~ the acquisition. If the successor was not an employer prior to the date of the acquisition of the ~~business~~ business, the successor shall be assigned a standard rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which ~~he~~ the successor acquired the business of the

predecessor; however, if ~~such the~~ successor makes application for the transfer of the account within 60 days after notification by the Commission of ~~his the~~ right to do so and the account is transferred, or meets the requirements for mandatory transfer, ~~he the~~ successor shall be assigned for the remainder of ~~such the~~ year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, ~~provided if~~ there was only one predecessor or if more than one and the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, ~~the transferring employer shall thereafter pay the standard rate of contributions of two and seven-tenths percent (2.7%) and shall continue to pay at such rate until he qualifies for a reduction, reacquires the account he transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3). However, when an account is transferred in its entirety by an employer to a successor on or after January 1, 1987, the transferring employer shall thereafter pay the standard beginning rate of contributions of two and twenty-five hundredths percent (2.25%) provided in G.S. 96-9(b)(1) and shall continue to pay at such that rate until he the employer qualifies for a reduction, reacquires the account he transferred or transferred, acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3)."~~

Section 4. G.S. 96-9(b)(1) reads as rewritten:

"(b) Rate of Contributions. --

- (1) Beginning Rate. -- The standard beginning rate of contributions for an employer is a percentage of wages paid by the employer during a calendar year for employment occurring during that year. The rate is determined in accordance with the following table:

<u>Percentage</u>	<u>Date After Which Employment Occurs</u>
2.25%	December 31, 1986
1.8	December 31, 1993
1.2	December 31, 1995
1.0	December 31, 1999"

Section 5. G.S. 96-9(b)(3) is amended by adding a new subdivision to read:

- "d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars (\$800,000,000) on the computation date and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars (\$800,000,000) on the computation date, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As But
Much Less
As Than

As Than		Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0%	&									
OVER		0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

Section 6. G.S. 96-9(b)(3)e. reads as rewritten:

- "e. Each employer whose account as of any computation date occurring after August 1, 1964, shows a debit balance shall be assigned the rate of contributions appearing on the line opposite his debit ratio as set forth in the following Rate Schedule for Overdrawn Accounts:

**RATE SCHEDULE FOR OVERDRAWN ACCOUNTS
BEGINNING WITH THE CALENDAR YEAR 1978**

When the Debit Ratio Is:		Assigned Rate
As Much As	But Less Than	
0.0%	0.3%	2.9% <u>2.3%</u>
0.3	0.6	3.1 <u>2.5</u>
0.6	0.9	3.3 <u>2.6</u>
0.9	1.2	3.5 <u>2.8</u>
1.2	1.5	3.7 <u>3.0</u>
1.5	1.8	3.9 <u>3.1</u>
1.8	2.1	4.1 <u>3.3</u>
2.1	2.4	4.3 <u>3.4</u>
2.4	2.7	4.5 <u>3.6</u>
2.7	3.0	4.7 <u>3.8</u>
3.0	3.3	4.9 <u>3.9</u>
3.3	3.6	5.1 <u>4.1</u>
3.6	3.9	5.3 <u>4.2</u>
3.9	4.2	5.5 <u>4.4</u>
4.2 and over	4.5	5.7 <u>4.6</u>
4.5	4.8	4.8
4.8	5.1	5.0
5.1	5.4	5.2
5.4 and over		5.4

The Rate Schedule for Overdrawn Accounts Beginning with the Calendar Year 1966 in force in any particular calendar year shall apply to all accounts for that calendar year subsequent replacement enactments notwithstanding."

Section 7. Section 9.11(a) and (b) of S.L. 1999-237 read as rewritten:

"Section 9.11.(a) ~~Contingent upon enactment of House Bill 275, 1999 General Assembly, there~~ There is appropriated from the Employment Security Commission Training and Employment Account created in G.S. 96-6.1, as enacted by House Bill 275, 1999 General Assembly, 96-6.1 to the Community Colleges System Office the sum of ~~twenty-two eighteen~~ million dollars ~~(\$22,000,000)~~ (\$18,000,000) for the 1999-2000 fiscal year and the sum of ~~fifty-six forty-eight~~ million five hundred thousand dollars ~~(\$56,500,000)~~ (\$48,500,000) for the 2000-2001 fiscal year. ~~If House Bill 275, 1999 Session, provides an expenditure schedule or source of funds different from that provided in this section, then House Bill 275, 1999 Session,~~

~~prevails to the extent of the conflict.~~ These funds shall be used as follows:

	<u>1999-2000</u>	<u>2000-2001</u>
1. Nonreverting Equipment, Technology, and MIS Reserve	<u>\$10,000,000</u> <u>\$12,000,000</u>	<u>\$38,000,000</u> <u>\$42,500,000</u>
2. Nonreverting Start-Up Fund for Regional and Cooperative Initiatives	\$ 3,000,000	\$ 3,000,000
3. New and Expanding Industry Training Program	<u>\$ 4,000,000</u> <u>\$ 6,000,000</u>	<u>\$5,500,000</u> <u>\$9,000,000</u>
4. Enhanced Focused Industrial Training Programs	\$ 1,000,000	\$ 2,000,000
TOTAL:	<u>\$18,000,000</u> <u>\$22,000,000</u>	<u>\$48,500,000</u> <u>\$56,500,000</u>

Funds allocated for the Nonreverting Start-Up Fund for Regional and Cooperative Initiatives shall be used for community college projects that foster regional cooperation among community colleges, between public schools and community colleges, and between universities and community colleges.

Section 9.11.(b) ~~Contingent upon enactment of House Bill 275, 1999 General Assembly, there~~ There is appropriated from the Employment Security Commission Training and Employment Account created in G.S. ~~96-6.1, as enacted by House Bill 275, 1999 General Assembly,~~ 96-6.1 to the Employment Security Commission the sum of ~~five four million five hundred thousand dollars (\$5,500,000) (\$4,500,000)~~ for the 1999-2000 fiscal year and the sum of ~~fourteen twelve million one hundred thousand dollars (\$14,100,000) (\$12,100,000)~~ for the 2000-2001 fiscal year for the costs of collecting and administering the new training and reemployment contribution and for enhanced reemployment services."

Section 8. Section 1 of this act is effective with respect to calendar quarters beginning on or after April 1, 1999. Section 7 of this act becomes effective July 1, 1999. The remainder of this act is effective with respect to calendar quarters beginning on or after January 1, 2000, and is repealed effective with respect to calendar quarters beginning on or after January 1, 2002.

In the General Assembly read three times and ratified this the 12th day of July, 1999.

Became law upon approval of the Governor at 10:10 p.m. on the 15th day of July, 1999.

S.B. 812

SESSION LAW 1999-322

AN ACT TO REQUIRE THAT A FOOD OR RETAIL BUSINESS THAT HOLDS AN ABC PERMIT AND IS LOCATED IN AN URBAN REDEVELOPMENT AREA SHALL NOT HAVE ALCOHOLIC BEVERAGE SALES IN EXCESS OF FIFTY PERCENT OF THE BUSINESS'S TOTAL ANNUAL SALES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-309. Alcoholic beverage sales in Urban Redevelopment Areas.

A food business as defined in G.S. 18B-1000(3), a retail business as defined in G.S. 18B-1000(7), or an eating establishment as defined in G.S. 18B-1000(2) that holds an ABC permit under this Chapter and is located in a part of a city that has been designated as an Urban Redevelopment Area under Article 22 of Chapter 160A of the General Statutes shall not have alcoholic beverage sales in excess of fifty percent (50%) of the business's total annual sales. Upon request of a city, the Commission shall investigate the total annual alcohol sales and total sales of a business as defined in this section. The Commission shall report the results of such an investigation to the city council, and the report shall contain only the percentage of annual alcohol sales in proportion to the business's total annual sales. A city may request an investigation of a particular business by the Commission only once in each calendar year. These audits may be conducted by the Commission only upon the request of the city council. Businesses covered by this section shall maintain full and accurate monthly records of their finances, separately indicating each of the following:

- (1) Amounts expended by the business for the purchase of alcoholic beverages and the quantity of alcoholic beverages purchased;
- (2) Amounts collected from the sale of alcoholic beverages sold; and
- (3) Amounts collected from the sale of food, nonalcoholic beverages, and all other items sold by the business.

Records of purchases of alcoholic beverages and sales of alcoholic beverages shall be filed separate and apart from all other records maintained on the premises, and all records related to alcoholic beverages, including original invoices, shall be maintained on the premises for three years and shall be open for inspection and audit pursuant to G.S. 18B-502."

Section 2. G.S. 18B-904(e) reads as rewritten:

"(e) Business or Location No Longer Suitable. --

- (1) The Commission may suspend or revoke a permit issued by it if, after compliance with the provisions of Chapter 150B of the General Statutes, it finds that the location occupied by

the permittee is no longer a suitable place to hold ABC permits or that the operation of the business with an ABC permit at that location is detrimental to the neighborhood. No order revoking or suspending an ABC permit pursuant to this section may be made except upon substantial evidence admissible under G.S. 150B-29(a).

- (2) The Commission shall suspend or revoke a permit issued by it if a permittee is in violation of G.S. 18B-309."

Section 3. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 7th day of July, 1999.

Became law upon approval of the Governor at 10:30 a.m. on the 16th day of July, 1999.

H.B. 651

SESSION LAW 1999-323

AN ACT TO ALLOW BRUNSWICK COUNTY TO ASSESS A FIRE PROTECTION FEE.

The General Assembly of North Carolina enacts:

Section 1. Fee-supported fire districts.

Section 1.(a) Request for Fee-Supported District. -- A county may create a fee-supported fire district for insurance grading purposes if it receives one of the following:

- (1) A written request to create the district signed by at least two-thirds of the members of the board of directors of a fire department that contracts with the county to provide fire protection within an area of the county.
- (2) A petition requesting creation of a district signed by fifteen percent (15%) of the resident freeholders living in an area in the county. The petition must describe the area to be designated as the district.

Section 1.(b) Creation of Fee-Supported District. -- Upon receipt of a request as provided in subsection (a), the county may adopt a resolution establishing a fee-supported fire district and imposing annual fees for the provision of fire protection services within the district. The fee may be established or changed only after the county board of commissioners has received the recommendations of the committee for that district, established under subsection (b1) of this section. The district may not include any area that is within (i) a tax-supported fire district established under Article 3A of Chapter 69 of the General Statutes; (ii) a county service district established under Article 16 of Chapter 153A of the General Statutes for fire protection purposes; or (iii) another fee-supported fire district. The district may not include any area that is within the corporate limits of a municipality unless the governing body of the municipality agrees to the inclusion. However, it is not necessary to obtain the consent of a municipality if the municipality has not levied a tax, performed any official act, nor held any elections within a period of 10 years

preceding the adoption of the resolution including the area within the district.

Section 1.(b1)Committee for District. -- Each district shall have a committee to allow local control over the fee-setting process. In each district that does not include any territory in a participating municipality, the committee shall consist of five members as follows: The Fire Chief, the member of the board of county commissioners in whose electoral district more than fifty percent (50%) of the land area of the district lies, a community member chosen by the Fire Department Board of Directors, a community member chosen by the board of county commissioners, and the Fire Marshal. In each district that does include any territory in a participating municipality, the committee shall consist of members as follows: The Fire Chief, the mayor of each participating municipality in the district, the member of the board of county commissioners in whose electoral district more than fifty percent (50%) of the land area of the district lies, a community member chosen by the Fire Department Board of Directors, a community member chosen by the board of county commissioners, and the Fire Marshal. In either type of district, the Fire Marshal shall chair the committee, but may vote only to break a tie. The committee shall conduct an inquiry into the amount of funds required by the district to meet its needs, and shall make findings on the issue. The committee will communicate these findings to the board of county commissioners and recommend a fee. The board of county commissioners will then set the fee. The same process shall be used for changes to the fee once established.

Section 1.(c)Fees. -- The fees imposed by the county may not exceed the cost of providing fire protection services within the district and may be imposed on owners of all real property that benefits from the availability of fire protection and on owners of all manufactured or mobile homes that benefit from the availability of fire protection. For the purpose of this section, the term 'fire protection' includes furnishing emergency medical, rescue, and ambulance services to protect persons in the district from injury or death. The county shall establish a schedule of fees for different classes of property and the fee for each class of property shall be proportional to the estimated cost of providing fire protection services to that class of property. The schedule of fees shall include the following classes of property and the fee on each class of property shall not exceed the following maximums:

- (1) A single-family dwelling or manufactured or mobile home, and appurtenant structures, plus up to five acres of surrounding land. The fee on this class of property may not exceed fifty dollars (\$50.00) per site per year.
- (2) Unimproved land other than the five acres of land classified as part of a single-family dwelling or manufactured or mobile home. The county may establish a maximum fee for unimproved land of not more than five dollars (\$5.00) per year.

- (3) An animal production or horticultural operation. The fee on this class of property may not exceed ten dollars (\$10.00) per site per year.
- (4) A commercial facility other than an animal production or horticultural operation. The fee on this class of property may not exceed fifty dollars (\$50.00) per site per year for commercial facilities with structures encompassing less than 5,000 square feet and one hundred dollars (\$100.00) per site per year for commercial facilities with structures encompassing 5,000 square feet or more.
- (5) A multiple-family dwelling. Each unit in a multiple-family dwelling shall be treated as a single-family dwelling under subdivision (1) of this subsection.
- (6) Any other class of property selected by the county. The fee on these classes of property may not exceed fifty dollars (\$50.00) per year.

Section 1.(d) Billing of Fees. -- The county may include a fee imposed under this section on the property tax bill for the real property, or the manufactured or mobile home, on which the fee is imposed.

Section 1.(e) Use of Fees. -- The county shall credit the fees collected within the district to a separate fund to be used only to furnish fire protection in the district. The board of commissioners shall administer the fund to provide fire protection by one or more of the following methods:

- (1) Contracting with any municipality, any incorporated nonprofit volunteer or community fire department, or the Department of Environment and Natural Resources.
- (2) Furnishing fire protection itself if it maintains an organized fire department.
- (3) Establishing a fire department in the district.

Section 1.(f) Audit of Fire Department. -- If the county contracts with a fire department to provide fire protection services in a fee-supported fire district, the fire department shall prepare an annual budget based on anticipated revenues and shall submit the budget to the county for processing and approval through the county's regular budget procedure. Upon request of the county, the fire department shall make quarterly or semiannual reports to the county detailing its revenues, expenditures, and activities. The county may audit the fire department's financial records upon reasonable notice to the fire department.

Section 1.(g) Extension of Area of District. -- The county may by resolution annex to any fee-supported fire district any territory that it could include in a new district under subsection (c) of this section, upon finding that:

- (1) The area to be annexed is contiguous to the district, with at least one-eighth of the area's aggregate external boundary coincident with the existing boundary of the district; and
- (2) The area to be annexed requires the services of the district.

The county may also by resolution annex to any fee-supported fire district any territory it could include in a new district under subsection (c) of this section if seventy-five percent (75%) of the real property owners in the territory to be annexed have petitioned the board of commissioners for annexation to the service district.

The area of any fee-supported fire district may be increased by including within the boundaries of the district any adjoining territory lying within a municipality if the territory is not already included in another fire protection district, and both the municipal governing body and the county commissioners of the county in which the district is located agree by resolution to the inclusion. However, it is not necessary to obtain the consent of a municipality if the municipality has not levied a tax, performed any official act, nor held any elections within a period of 10 years preceding the adoption of the resolution including the area within the district.

Section 1.(h) Annexation of District. -- When any portion of a fee-supported fire district has been annexed by a municipality furnishing fire protection to its citizens, and the municipality has not agreed to allow territory within it to be in the district, then the portion of the district annexed is no longer part of a fee-supported district. For the purposes of this section and regardless of the actual effective date of annexation, the date of annexation shall be considered to be a date in the month of June.

Section 1.(i) Abolition of District. -- Upon finding that there is no longer a need for a given fee-supported fire district, the board of commissioners may repeal the resolution establishing the district and thus abolish the district.

Section 2. This act applies to Brunswick County only.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law on the date it was ratified.

H.B. 667

SESSION LAW 1999-324

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CITY OF ROANOKE RAPIDS.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the City of Roanoke Rapids are extended to include the following described territory:

That certain tract or parcel of land lying and being situated in Roanoke Rapids Township, Halifax County, North Carolina, more particularly described as follows: Beginning at new iron pin, said iron pin being the Southern right-of-way of State Road 1426, the same being in the North-Eastern right-of-way of the access road to Lakeview Plaza Development. Thence leaving said point of beginning along the Southern right-of-way of Bolling Road, State Road 1426, the following courses and distances: N 60°00'42" E chord 118.14'-with a radius of

1,656.45' and an arc of 118.17'-continuing along Bolling Road right-of-way a chord N 62°34'31" E 30.05' with a radius of 1,656.45' and an arc of 30.05' thence leaving the right-of-way of Bolling Road S 30°37'00" E 159.90' to a new 3/4 inch iron pipe, thence S 59°23'00" W. 164.99' to a new 3/4 inch iron pipe, the same being in the Eastern right-of-way of a 45' access drive to Lakeview Plaza Development, thence N 30°, thence along the aforesaid access drive N 30°37'00" W 46', thence N 30°37'39" W 100.03', and thence N 14°26'26" E 23.84' to a new iron pipe (3/4 inches), the same being the point of beginning. Said tract or parcel of land containing approximately 26,675 square feet.

See plat Cabinet 4 Slide 44A and 44B for the original map showing a part of the foregoing described tract or parcel of land. The foregoing description contains the description of the parcel of land purchased by the Grantee as per Deed recorded in Book 1733 page 354 and Deed recorded in Book 1467 page 568. The foregoing parcel of land excludes the parcel of land acquired by the Department of Transportation from the Savings Bank as per F.A. project-STP-1426 [1] also known as State Highway Project 8.2300601. Said deed is recorded in Book 1732 page 086, Halifax Public Registry.

Section 2. Real and personal property in the territory annexed pursuant to this act is subject to municipal taxes as provided in G.S. 160A-58.10.

Section 3. This act becomes effective September 30, 1999.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law on the date it was ratified.

H.B. 740

SESSION LAW 1999-325

AN ACT CORRECTING AN ERROR IN A PROPERTY DESCRIPTION IN AN ACT REMOVING PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF MOUNT AIRY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1999-232 is repealed and the property described therein is added to the corporate limits of the City of Mount Airy.

Section 2. The following described property is removed from the corporate limits of the City of Mount Airy:

Being a 56.997 Acre tract of land recorded in Plat Book 688 Page 645 of the Surry County Register of Deeds. Said plat being Tract #2 recorded on June 8, 1998, and surveyed by Bunn Engineering, RLS #2827. Property is shown as parcel 7807 on map 5919 of the Surry County Tax Maps.

Section 3. This act becomes effective June 30, 1999.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law on the date it was ratified.

H.B. 251

SESSION LAW 1999-326

AN ACT TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWN OF BAKERSVILLE BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 537 of the 1987 Session Laws, as amended by S.L. 1997-410, reads as rewritten:

"Section 1. The Register of Deeds of Mitchell County shall not receive for recordation any deed unless the following conditions are met:

- (1) The deed is accompanied by a certificate from the Mitchell County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.
- (2) If the property described in the deed is located in whole or in part in the Town of Spruce Pine, ~~Pine~~ or the Town of Bakersville, the deed is accompanied by a certificate from the tax collector for ~~the town~~ each of these towns in which it is located to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 2. This act becomes effective August 1, 1999, and applies to deeds recorded on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law on the date it was ratified.

S.B. 1043

SESSION LAW 1999-327

AN ACT TO PROVIDE FUNDS TO MEET THE REQUIREMENTS OF A CONSENT JUDGMENT UNDER THE INTANGIBLES TAX CASES.

The General Assembly of North Carolina enacts:

Section 1. The settlement agreement executed by the Speaker of the House of Representatives and the President Pro Tempore of the Senate on July 8, 1999, in Smith, et al. v. State, 95 CVS 06715, and Shaver, et al. v. State, 98 CVS 00625, is hereby approved by the General Assembly.

Section 2. There is appropriated from the Savings Reserve Account for the 1999-2000 fiscal year to the Department of the State Treasurer on October 1, 1999, the sum of two hundred million dollars (\$200,000,000) to a reserve for the Smith/Shaver cases. These funds shall be held in reserve for allocation pursuant to a consent order entered in Wake County Superior Court for the Class B plaintiffs in Smith, et al. v. State, 95 CVS 06715 and for all plaintiffs

in Shaver, et al. v. State, 98 CVS 00625. It is the intent of the General Assembly to restore to the Savings Reserve Account the sum of two hundred million dollars (\$200,000,000) during the 2000-2001 fiscal year.

The General Assembly shall allocate the additional sum of two hundred forty million dollars (\$240,000,000) no later than July 10, 2000, in accordance with the provisions of a consent order entered in the Smith/Shaver cases.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 10:30 p.m. on the 20th day of July, 1999.

S.B. 953

SESSION LAW 1999-328

AN ACT TO ENACT THE AMBIENT AIR QUALITY
IMPROVEMENT ACT OF 1999.

The General Assembly of North Carolina enacts:

Whereas, the Constitution of North Carolina declares that the policy of this State is to conserve and protect State lands and waters for the benefit of all North Carolina citizens and to control and limit air pollution within the State; and

Whereas, the State has enacted comprehensive statutory and regulatory protections for reducing air pollution from stationary sources; and

Whereas, ozone air pollution adversely affects the health and welfare of the citizens of North Carolina through the impairment of lung function and exacerbation of asthma and other diseases of the lung; and

Whereas, visibility at some of the State's places of beauty, such as the Great Smoky Mountains National Park and the Blue Ridge Mountain range, has been impaired by ozone air pollution that is created by the reaction of nitrogen oxides (NOx) and other chemicals in sunlight; and

Whereas, the decentralized system of inspection stations effectively uses a public-private partnership to enforce motor vehicle pollution controls; and

Whereas, gains in motor vehicle pollution control technology have been offset by increased vehicle use, resulting in greater emissions of nitrogen oxides (NOx) and greater ozone air pollution; and

Whereas, the sulfur contained in gasoline impedes the effectiveness of catalytic converters, the devices that reduce the amount of pollution emitted from vehicle tailpipes, thereby degrading the emission control systems of vehicles; and

Whereas, new motor vehicle pollution control technology is more sensitive to the sulfur content of fuels and will require new emissions inspection methods; and

Whereas, reducing emissions of nitrogen oxides (NOx) from motor vehicles by twenty-five percent (25%) within the next 10 years will complement the State's stationary source control strategy; and

Whereas, reducing the growth of vehicle miles traveled in the State by twenty-five percent (25%) within the next 10 years will complement the State's controls of nitrogen oxide (NOx) emissions from stationary sources; and

Whereas, leaking underground storage tanks and tanker trucks release quantities of volatile organic compounds into the air, which mix with nitrogen oxides (NOx) to form ground level ozone; and

Whereas, clean burning fuels, alternative-fueled vehicles, and low emission vehicle usage should be encouraged statewide; and

Whereas, the State must lead the way in combating ground level ozone pollution from motor vehicles through its own purchases and policies; Now, therefore,

PART I. STATEWIDE GOALS

Section 1.1. It shall be the goal of the State to reduce emissions of nitrogen oxides (NOx) from all sources by at least twenty-five percent (25%) by 1 July 2009. It shall be the goal of the State to reduce the growth of vehicle miles traveled in the State by at least twenty-five percent (25%) of that growth that would otherwise occur by 1 July 2009. The Department of Environment and Natural Resources and the Department of Transportation shall evaluate progress toward achieving these goals in each fiscal year and shall report their findings and recommendations as to any measures that may be needed to achieve these goals to the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

PART II. SULFUR CONTENT OF MOTOR FUELS

Section 2.1. Article 3 of Chapter 119 of the General Statutes is amended by adding a new section to read:

"§ 119-26.2. Sulfur content standards.

(a) No person shall manufacture, sell, or offer for sale gasoline that contains a concentration of sulfur greater than 30 parts per million except that a person may manufacture, sell, or offer for sale gasoline that contains a concentration of sulfur of not more than 80 parts per million if the average concentration of sulfur in the gasoline manufactured, sold, or offered for sale by that person is 30 parts per million or less. The average concentration of sulfur contained in gasoline shall be determined on the basis of a one-year period established by rule.

(b) The Gasoline and Oil Inspection Board shall adopt rules to implement this section."

Section 2.2. Section 2.1 of this act becomes effective as provided in this section. No later than 1 July 2000, the Governor shall determine whether the United States Environmental Protection Agency has adopted, pursuant to the Notice of Proposed Rulemaking published on 13 May 1999 in the Federal Register, Volume 64, Number 92, Page 26003 et seq., regulations applicable to gasoline manufactured, sold, and offered for sale in this State that limit the sulfur content of gasoline to a concentration equal to or less than the concentration set out in Section 2.1 of this act. If the Governor so determines, the Governor shall issue an Executive Order setting out the date on which Section 2.1 of this act becomes effective, which shall be the date on which the federal regulation becomes effective in this State. Otherwise, Section 2.1 of this act becomes effective 1 January 2004. If the United States Environmental Protection Agency promulgates a regulation that imposes a limit on the concentration of sulfur in gasoline other than that set out in G.S. 119-26.2, as enacted by Section 2.1 of this act, it is the intention of the General Assembly to review the limit established in G.S. 119-26.2. In that event, the Environmental Review Commission shall review the limit on the concentration of sulfur in gasoline and report its findings and recommendations, if any, to the General Assembly.

Section 2.3. G.S. 119-26.1 reads as rewritten:

"§ 119-26.1. ~~Oxygen content standards~~ Content of motor fuels and reformulated gasoline.

(a) Rules adopted pursuant to G.S. 143-215.107(a)(9) to regulate the ~~oxygen~~ content of ~~gasoline~~ motor fuels or to require the use of reformulated gasoline shall be implemented by the Department of Agriculture and Consumer Services and the Gasoline and Oil Inspection Board. Such rules shall be implemented within any area specified by the Environmental Management Commission when the Commission certifies to the Commissioner of Agriculture that implementation:

- (1) Will improve the ambient air quality within the specified county or counties;
- (2) Is necessary to achieve attainment or preclude violations of the National Ambient Air Quality Standards; or
- (3) Is otherwise necessary to meet federal requirements.

(b) The Department of Agriculture and Consumer Services and the Gasoline and Oil Inspection Board may adopt rules to implement this section. Rules shall be consistent with the implementation schedule and rules adopted by the Environmental Management Commission.

(c) The Commissioner of Agriculture may assess and collect civil penalties for violations of rules adopted under G.S. 143-215.107(a)(9) or this section in accordance with G.S. 143-215.114A. The Commissioner of Agriculture may institute a civil action for injunctive relief to restrain, abate, or prevent a violation or threatened violation of rules adopted under G.S. 143-215.107(a)(9) or this section in

accordance with G.S. 143-215.114C. The assessment of a civil penalty under this section and G.S. 143-215.114A or institution of a civil action under G.S. 143-215.114C and this section shall not relieve any person from any other penalty or remedy authorized under this Article.

(c1) The clear proceeds of civil penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) The Commissioner of Agriculture may delegate his powers and duties under this subsection to the Director of the Standards Division of the Department of Agriculture and Consumer Services."

PART III. MOTOR VEHICLE EMISSIONS INSPECTION AND MAINTENANCE

Section 3.1. Article 21B of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.107A. Motor vehicle emissions testing and maintenance program.

(a) General Provisions. --

- (1) G.S. 143-215.107(a)(6) shall be implemented as provided in this section.
- (2) Motor vehicle emissions inspections shall be performed by a person who holds an emissions inspection mechanic license issued as provided in G.S. 20-183.4A(c) at a station that holds an emissions inspection station license issued under G.S. 20-183.4A(a) or at a place of business that holds an emissions self-inspector license issued as provided in G.S. 20-183.4A(d). Motor vehicle emissions inspections may be performed by a decentralized network of test-and-repair stations as described in 40 Code of Federal Regulations § 51.353 (1 July 1998 Edition). The Commission may not require that motor vehicle emissions inspections be performed by a network of centralized or decentralized test-only stations.

(b) Type of Test Required. -- Motor vehicle emissions inspections shall be performed using the two-mode Acceleration Simulation Mode (ASM) test described in Federal Register, Volume 57, Number 215, (5 November 1992), Pages 52955 to 52996.

(c) Counties Covered. -- Motor vehicle emissions inspections shall be performed only in the following counties: Cabarrus, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Orange, Union, and Wake.

(d) Additional Counties. -- The Commission may require that motor vehicle emissions inspections be performed in counties in addition to those set out in subsection (c) of this section. In determining whether to require that motor vehicle emissions inspections be performed in a county, the Commission may consider the population of, and distribution of population in, the county; the projected change in population of, and distribution of population in,

the county; the number of vehicles registered in the county; the projected change in the number of vehicles registered in the county; vehicle miles traveled in the county; the projected change in vehicle miles traveled in the county; current and projected commuting patterns in the county; and the current and projected impact of these factors on attainment of air quality standards in the county and in areas outside the county. The Commission may not require that motor vehicle emissions testing be performed in any county with a population of less than 40,000 based on the most recent population estimates prepared by the State Planning Officer. The Commission may not require that motor vehicle emissions testing be performed in any county in which the number of vehicle miles traveled per day is less than 900,000, based on the most recent estimates prepared by the Department of Transportation. In order to disapprove a rule that requires that motor vehicle emissions inspections be performed in one or more additional counties, a bill introduced pursuant to G.S. 150B-21.3(b) must amend subsection (c) of this section to add one or more other counties in which the total population and vehicle miles traveled per day equal or exceed the total population and vehicle miles traveled in the county or counties listed in the rule that the bill would disapprove."

Section 3.2. The Environmental Management Commission shall adopt rules to implement G.S. 143-215.107A(b), as enacted by Section 3.1 of this act. These rules shall become effective on 1 July 2002. The Environmental Management Commission shall not require that motor vehicle emissions inspections be performed in any county pursuant to G.S. 143-215.107A(d), as enacted by Section 3.1 of this act, prior to 1 July 2006. The Environmental Management Commission shall not require motor vehicle emissions inspections for diesel powered vehicles prior to 1 July 2001.

Section 3.3. Effective 1 July 2003, G.S. 143-215.7A(c), as enacted by Section 3.1 of this act, reads as rewritten:

"(c) Motor vehicle emissions inspections shall be performed ~~only~~ in the following counties: Cabarrus, Catawba, Cumberland, Davidson, Durham, Forsyth, Gaston, Guilford, Iredell, Johnston, Mecklenburg, Orange, Rowan, Union, and Wake."

Section 3.4. Effective 1 January 2004, G.S. 143-215.7A(c), as enacted by Section 3.1 of this act and amended by Section 3.3 of this act, reads as rewritten:

"(c) Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Cabarrus, Catawba, Chatham, Cumberland, Davidson, Durham, Forsyth, Franklin, Gaston, Guilford, Iredell, Johnston, Lee, Lincoln, Mecklenburg, Moore, Orange, Randolph, Rowan, Stanly, Union, and Wake."

Section 3.5. Effective 1 July 2004, G.S. 143-215.7A(c), as enacted by Section 3.1 of this act and amended by Sections 3.3 and 3.4 of this act, reads as rewritten:

"(c) Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Buncombe, Cabarrus, Catawba, Chatham, Cleveland, Cumberland, Davidson, Durham, Forsyth,

Franklin, Gaston, Granville, Guilford, Harnett, Iredell, Johnston, Lee, Lincoln, Mecklenburg, Moore, Orange, Randolph, Rockingham, Rowan, Stanly, Union, and Wake."

Section 3.6. Effective 1 January 2005, G.S. 143-215.7A(c), as enacted by Section 3.1 of this act and amended by Sections 3.3 through 3.5 of this act, reads as rewritten:

"(c) Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Buncombe, Cabarrus, Catawba, Chatham, Cleveland, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Iredell, Johnston, Lee, Lenoir, Lincoln, Mecklenburg, Moore, Nash, Orange, Pitt, Randolph, Robeson, Rockingham, Rowan, Stanly, Union, ~~and Wake~~, Wake, Wayne, and Wilson."

Section 3.7. Effective 1 July 2005, G.S. 143-215.7A(c), as enacted by Section 3.1 of this act and amended by Sections 3.3 through 3.6 of this act, reads as rewritten:

"(c) Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Buncombe, Burke, Cabarrus, Caldwell, Catawba, Chatham, Cleveland, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Haywood, Henderson, Iredell, Johnston, Lee, Lenoir, Lincoln, Mecklenburg, Moore, Nash, Orange, Pitt, Randolph, Robeson, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Union, Wake, Wayne, Wilkes, and Wilson."

Section 3.8. Effective 1 January 2006, G.S. 143-215.7A(c), as enacted by Section 3.1 of this act and amended by Sections 3.3 through 3.7 of this act, reads as rewritten:

"(c) Motor vehicle emissions inspections shall be performed in the following counties: Alamance, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Catawba, Chatham, Cleveland, Craven, Cumberland, Davidson, Durham, Edgecombe, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Haywood, Henderson, Iredell, Johnston, Lee, Lenoir, Lincoln, Mecklenburg, Moore, Nash, New Hanover, Onslow, Orange, Pitt, Randolph, Robeson, Rockingham, Rowan, Rutherford, Stanly, Stokes, Surry, Union, Wake, Wayne, Wilkes, and Wilson."

Section 3.9. Sections 3.3 through 3.8 of this act become effective only if G.S. 20-183.7 is amended to increase the fee for motor vehicle emissions inspections no later than 31 December 2000. G.S. 143-215.107A(b), as enacted by Section 3.1 of this act, and Section 3.2 of this act are repealed effective 1 January 2001 unless, prior to 1 January 2001, G.S. 20-183.7 has been amended to increase the fee for motor vehicle emissions inspection.

Section 3.10. The Department of Environment and Natural Resources, with the assistance of the Division of Motor Vehicles of the Department of Transportation and the affected parties, shall study issues related to costs associated with the motor vehicle emissions inspection and maintenance program. The Department shall determine what constitutes a reasonable fee for motor vehicle

emissions inspections under the current program and under the enhanced program to be implemented pursuant to G.S. 143-215.107A(b), as enacted by Section 3.1 of this act. In determining what constitutes a reasonable fee, the Department shall consider the cost of emissions inspection equipment, the useful life of the equipment, the average period of time during which a purchaser of this equipment is able to amortize this cost, telephone charges incurred in connection with the registration denial program, whether a fee should be charged to reinspect a vehicle that fails an emissions test after repairs to the vehicle have been made, and whether the State should purchase emissions inspection equipment purchased prior to 10 June 1999 for use in the current program but that will be rendered obsolete by the enhanced program. The Department shall report its findings and recommendations to the Environmental Review Commission on or before 1 February 2000. The Environmental Review Commission, with the assistance of the Fiscal Research Division of the Legislative Services Office, shall evaluate these recommendations. The Environmental Review Commission shall recommend legislation to amend G.S. 20-183.7 to increase the fee for motor vehicle emissions inspections to the 2000 Regular Session of the 1999 General Assembly.

Section 3.11. G.S. 20-183.2 reads as rewritten:

"§ 20-183.2. Description of vehicles subject to safety or emissions inspection; definitions.

(a) Safety. -- A motor vehicle is subject to a safety inspection in accordance with this Part if it meets all of the following requirements:

- (1) It is subject to registration with the Division under Article 3 of this Chapter.
- (2) It is not subject to inspection under 49 C.F.R. Part 396, the federal Motor Carrier Safety Regulations.
- (3) It is not a trailer whose gross weight is less than 4,000 pounds or a house trailer.

(b) Emissions. -- A motor vehicle is subject to an emissions inspection in accordance with this Part if it meets all of the following requirements:

- (1) It is subject to registration with the Division under Article 3 of this Chapter.
- (2) It is not a trailer whose gross weight is less than 4,000 pounds, a house trailer, or a motorcycle.
- (3) It is a 1975 or later model.
- ~~(4) It is powered or designed so that it could be powered by gasoline.~~
- (5) It meets any of the following descriptions:
 - a. It is required to be registered in an emissions county.
 - b. It is part of a fleet that is operated primarily in an emissions county.
 - c. It is offered for rent in an emissions county.
 - d. It is a used vehicle offered for sale by a dealer in an emissions county.

- e. It is operated on a federal installation located in an emissions county and it is not a tactical military vehicle. Vehicles operated on a federal installation include those that are owned or leased by employees of the installation and are used to commute to the installation and those owned or operated by the federal agency that conducts business at the installation.
 - f. It is otherwise required by 40 C.F.R. Part 51 to be subject to an emissions inspection.
- (c) Definitions. -- The following definitions apply in this Part:
- (1) Emissions county. -- A county in which the State either is required by federal law to conduct emissions testing or has agreed in its State Implementation Plan submitted to the federal Environmental Protection Agency to conduct emissions testing. The State listed in G.S. 143-215.107A(c) or designated by the Environmental Management Commission establishes the emissions counties pursuant to rules adopted under G.S. 143-215.107(a)(6), pursuant to G.S. 143-215.107A(d) and certified to the Commissioner of Motor Vehicles as a county in which the implementation of a motor vehicle emissions inspection program will improve ambient air quality.
 - (2) Federal installation. -- An installation that is owned by, leased to, or otherwise regularly used as the place of business of a federal agency."

Section 3.12. G.S. 143-215.107 reads as rewritten:

"§ 143-215.107. *Air quality standards and classifications.*

(a) Duty to Adopt Plans, Standards, etc. -- The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

- (1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.
- (2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.
- (3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.
- (4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the

operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

- (5) To develop and adopt emission control standards as in the judgment of the Commission may be necessary to prohibit, abate, or control air pollution commensurate with established air quality standards. ~~The standards may be applied uniformly to the State as a whole or to any area of the State designated by the Commission.~~ This subdivision does not apply to that portion of the National Emission Standards for Hazardous Air Pollutants for asbestos that governs demolition and renovation as set out in 40 C.F.R. § 61.141, 61.145, 61.150, and 61.154 (1 July 1993 edition).
- (6) ~~To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations, adopt motor vehicle emissions standards; to adopt, when necessary and practicable, a motor vehicle emissions inspection and maintenance program to improve ambient air quality; to require that motor vehicle emissions be monitored while the vehicle is in operation by means of onboard diagnostic equipment (OBD) installed by the vehicle manufacturer; to require manufacturers of motor vehicles to furnish to the Equipment and Tool Institute and, upon request and at a reasonable charge, to any person who maintains or repairs a motor vehicle, all information necessary to fully make use of the onboard diagnostic equipment and the data compiled by that equipment; to certify to the Commissioner of Motor Vehicles that ambient air quality will be improved by the implementation of a motor vehicle emissions inspection and maintenance program in a county. The Commission shall implement this subdivision as provided in G.S. 143-215.107A.~~
- (7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas.
- (8) To develop and adopt standards and plans necessary to implement programs to control acid deposition and to regulate the use of sulfur dioxide allowances and nitrogen oxides (NOx) emissions in accordance with Title IV and

implementing regulations adopted by the United States Environmental Protection Agency.

- (9) To regulate the ~~oxygen~~ content of gasoline, motor fuels, as defined in G.S. 119-16, to require use of reformulated gasoline as the Commission determines necessary, to implement the requirements of Title II and implementing regulations adopted by the United States Environmental Protection Agency, and to develop standards and plans to implement this subdivision. ~~Rules adopted under this subdivision may specify standards for a particular area of the State that differ from standards specified for other areas as may be necessary to improve ambient air quality within a particular area, achieve attainment or preclude violations of the National Ambient Air Quality Standards, or to meet other federal requirements.~~ Rules may authorize the use of marketable oxygen credits for gasoline as provided in federal requirements.
- (10) To develop and adopt standards and plans necessary to implement requirements of the federal Clean Air Act and implementing regulations adopted by the United States Environmental Protection Agency.
- (11) To develop and adopt economically feasible standards and plans necessary to implement programs to control the emission of odors from animal operations, as defined in G.S. 143-215.10B.
- (12) To develop and adopt a program of incentives to promote voluntary reductions of emissions of air contaminants, including, but not limited to, emissions banking and trading and credit for voluntary early reduction of emissions.
- (13) To develop and adopt rules governing the certification of persons who inspect vehicle-mounted tanks used to transport motor fuel and to require that inspection of these tanks be performed only by certified personnel.
- (14) To develop and adopt rules governing the sale and service of mobile source exhaust emissions analyzers and to require that vendors of these analyzers provide adequate surety to purchasers for the performance of the vendor's contractual or other obligations related to the sale and service of analyzers.

(b) Criteria for Standards. -- In developing air quality and emission control standards, motor vehicle emissions standards, motor vehicle emissions inspection and maintenance requirements, rules governing the content of motor fuels or requiring the use of reformulated gasoline, and other standards and plans to improve ambient air quality, the Commission shall ~~recognize~~ consider varying local conditions and requirements and may prescribe uniform standards and plans throughout the State or different standards and plans for different counties or areas as may be necessary and appropriate to

~~facilitate accomplishment of the stated~~ improve ambient air quality in the State or within a particular county or area, achieve attainment or preclude violations of state or national ambient air quality standards, meet other federal requirements, or achieve the purposes of this Article and Article 21.

(c) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article."

Section 3.13. G.S. 20-183.8F reads as rewritten:

"§ 20-183.8F. *Requirements for giving ~~certain emissions~~ license holders notice of violations and for taking summary action.*

(a) Finding of Violation. -- When an auditor of the Division finds that ~~an emissions~~ a violation has occurred that could result in the suspension or revocation of an ~~emissions~~ inspection station license, ~~an emissions~~ a self-inspector license, or ~~an emissions~~ a mechanic license, the auditor must give the affected license holder written notice of the finding. The notice must be given within five business days after the violation occurred. The notice must state the period of suspension or revocation that could apply to the violation and any monetary penalty that could apply to the violation. The notice must also inform the license holder of the right to a hearing if the Division charges the license holder with the violation.

(b) Notice of Charges. -- When the Division decides to charge an ~~emissions~~ inspection station, ~~an emissions~~ a self-inspector, or ~~an emissions~~ a mechanic with a violation that could result in the suspension or revocation of the person's ~~emissions~~ license, an auditor of the Division must deliver a written statement of the charges to the affected license holder. The statement of charges must inform the license holder of this right, instruct the person on how to obtain a hearing, and inform the license holder of the effect of not requesting a hearing. The license holder has the right to a hearing before the license is suspended or revoked. G.S. 20-183.8E sets out the procedure for obtaining a hearing.

(c) Exception for Summary Action. -- The right granted by subsection (b) of this section to have a hearing before ~~an emissions~~ a license is suspended or revoked does not apply if the Division summarily suspends or revokes the license after a judge has reviewed and authorized the proposed action. A license issued to an ~~emissions~~ inspection station, ~~an emissions~~ a self-inspector, or ~~an emissions~~ a mechanic is a substantial property interest that cannot be summarily suspended or revoked without judicial review."

Section 13.14. G.S. 20-183.8G reads as rewritten:

"§ 20-183.8G. *Administrative and judicial review.*

(a) Right to Hearing. -- A person who applies for a license or registration under this Part or who has a license or registration issued under this Part has the right to a hearing when any of the following occurs:

- (1) The Division denies the person's application for a license or registration.

- (2) The Division delivers to the person a written statement of charges of ~~an emissions~~ a violation that could result in the suspension or revocation of the person's ~~emissions~~ license.
- (3) The Division summarily suspends or revokes the person's license following review and authorization of the proposed adverse action by a judge.
- (4) The Division assesses a civil penalty against the person.
- (5) The Division issues a warning letter to the person.
- (6) The Division cancels the person's registration.

(b) Hearing After Statement of Charges. -- When ~~an emissions~~ a license holder receives a statement of charges of ~~an emissions~~ a violation that could result in the suspension or revocation of the person's license, the person can obtain a hearing by making a request for a hearing. The person must make the request to the Division within 10 days after receiving the statement of the charges. A person who does not request a hearing within this time limit waives the right to a hearing.

The Division must hold a hearing requested under this subsection within three business days after receiving the request unless the person requesting the hearing asks for additional time to prepare for the hearing. A person may ask for no more than seven additional business days to prepare. If the additional time requested is within this limit, the Division must grant a person the additional time requested. The hearing must be held at the location designated by the Division. Suspension or revocation of the license is stayed until a decision is made following the hearing.

If a person does not request a hearing within the time allowed for making the request, the proposed suspension or revocation becomes effective the day after the time for making the request ends. If a person requests a hearing but does not attend the hearing, the proposed suspension or revocation becomes effective the day after the date set for the hearing.

(c) Hearing After Summary Action. -- When the Division summarily suspends a license issued under this Part after judicial review and authorization of the proposed action, the person whose license was suspended or revoked may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person was notified of the summary action. The Division must hold a hearing requested under this subsection within 14 days after receiving the request.

(d) All Other Hearings. -- When this section gives a person the right to a hearing and subsection (b) or (c) of this section does not apply to the hearing, the person may obtain a hearing by filing with the Division a written request for a hearing. The request must be filed within 10 days after the person receives written notice of the action for which a hearing is requested. The Division must hold a hearing within 90 days after the Division receives the request.

(e) Review by Commissioner. -- The Commissioner may conduct a hearing required under this section or may designate a person to

conduct the hearing. When a person designated by the Commissioner holds a hearing and makes a decision, the person who requested the hearing has the right to request the Commissioner to review the decision. The procedure set by the Division governs the review by the Commissioner of a decision made by a person designated by the Commissioner.

(f) Decision. -- A decision made after a hearing on the imposition of a monetary penalty against a motorist for an emissions violation or on a Type I, II, or III emissions violation by an emissions license holder must uphold any monetary penalty, license suspension, license revocation, or warning required by G.S. 20-183.8A or G.S. 20-183.8B, respectively, if the decision contains a finding that the motorist or license holder committed the act for which the monetary penalty, license suspension, license revocation, or warning was imposed. A decision made after a hearing on any other action may uphold or modify the action.

(g) Judicial Review. -- Article 4 of Chapter 150B of the General Statutes governs judicial review of an administrative decision made under this section."

PART IV. STATE AGENCY GOALS, PLANS, DUTIES, AND REPORTS; OTHER PROVISIONS

Section 4.1. As used in this Part, alternative-fueled vehicle means a motor vehicle capable of operating on electricity; natural gas; propane; hydrogen; reformulated gasoline; ethanol; other alcohol fuels, separately or in mixtures of eighty-five percent (85%) or more of alcohol by volume; or fuels, other than alcohol, derived from biological materials. For purposes of this Part, a vehicle that has been converted to operate on a fuel other than the fuel for which it was originally designed is not a new or replacement vehicle.

Section 4.2. It shall be the goal of the State that on and after 1 January 2004 at least seventy-five percent (75%) of the new or replacement light duty cars and trucks purchased by the State will be alternative-fueled vehicles or low emission vehicles. The Department of Administration, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop a plan to achieve this goal and to fuel and maintain these vehicles. The Department of Administration shall report on progress in developing and implementing this plan and achieving this goal to the Environmental Review Commission on 1 September of each year beginning 1 September 2000. For purposes of this section, a light duty car or truck is one that is rated at 8,500 pounds or less Gross Vehicle Weight Rating (GVWR).

Section 4.3. The Department of Public Instruction, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop a draft plan for the purchase of school buses under which, beginning 1 January 2004, at least fifty percent (50%) of the new and replacement public school

buses purchased for use in counties with a population of at least 100,000, based on the most recent population estimates prepared by the Office of State Planning, will be alternative-fueled or low emission vehicles. These departments shall invite interested parties to participate in the development of the draft plan. The draft plan will consider the infrastructure requirements that would be needed to fuel and maintain these buses and the costs and benefits of implementation of the plan, including the impact on ambient air quality. The Department of Public Instruction shall submit the draft plan to the Environmental Review Commission on or before 1 September 2000.

Section 4.4. The Department of Transportation and the Department of Environment and Natural Resources shall jointly develop a draft plan for the purchase of buses under which, beginning 1 January 2004, at least fifty percent (50%) of the new and replacement buses purchased to provide public transportation in counties in which motor vehicle emissions inspections are required to be performed under subsection (c) or (d) of G.S. 143-215.107A will be alternative-fueled or low emission vehicles. These departments shall invite interested parties to participate in the development of the draft plan. The draft plan will consider the infrastructure requirements that would be needed to fuel and maintain these buses and the costs and benefits of implementation of the plan, including the impact on ambient air quality. The Department of Transportation shall submit the draft plan to the Environmental Review Commission on or before 1 September 2000.

Section 4.5. The Department of Transportation, the Department of Commerce, and the Department of Environment and Natural Resources shall jointly develop recommendations for incentives to increase the use of alternative-fueled and low emission light duty cars and trucks in privately owned fleets. The Department of Environment and Natural Resources shall submit these recommendations to the Environmental Review Commission on or before 1 February 2000. The Department of Environment and Natural Resources shall report on progress in increasing the use of alternative-fueled and low emission light duty cars and trucks in privately owned fleets to the Environmental Review Commission on or before 1 October of each year beginning 1 October 2001.

Section 4.6. The Department of Administration, the Office of State Personnel, the Department of Transportation, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by State employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The plan shall consider the use of carpooling, vanpooling, public transportation, incentives, and other appropriate strategies. The Office of State Personnel shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

Section 4.7. The Department of Transportation, the Department of Commerce, and the Department of Environment and Natural Resources shall jointly develop and periodically update a plan to reduce vehicle miles traveled by private sector employees and vehicle emissions resulting from job-related travel, including commuting to and from work. The plan shall consider the use of incentives for both private sector employees and employers, carpooling, vanpooling, public transportation, and other appropriate strategies. The Department of Transportation shall report on the development and implementation of the plan to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

Section 4.8. The Office of State Personnel shall implement a policy that promotes telework/telecommuting for State employees as recommended by the report of the State Auditor entitled "Establishing a Formal Telework/Telecommuting Program for State Employees" and dated October 1997. It shall be the goal of the State to reduce State employee vehicle miles traveled in commuting by twenty percent (20%) without reducing total work hours or productivity. The Office of State Personnel shall report on progress in implementing this section to the Environmental Review Commission on or before 1 October of each year beginning 1 October 2000.

Section 4.9. The Environmental Management Commission shall initiate rule making to regulate the emissions of nitrogen oxides (NOx) from complex sources pursuant to G.S. 143-215.109 no later than 1 October 1999. The Environmental Management Commission shall report on the progress of this rule making as a part of each quarterly report the Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

Section 4.10. Chapter 136 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 16.

"Planning.

"§ 136-200. Definitions.

As used in this Article:

- (1) 'Conformity' means the extent to which transportation plans, programs, and projects conform to federal air quality requirements as specified in 40 Code of Federal Regulations, Part 93, Subpart A (1 July 1998 Edition).
- (2) 'Department' means the Department of Transportation.
- (3) 'Interface' means a relationship between streams of traffic that efficiently and safely maximizes the mobility of people and goods within and through urbanized areas and minimizes transportation-related fuel consumption and air pollution.
- (4) 'Metropolitan Planning Organization' or 'MPO' means an agency that is designated as a Metropolitan Planning Organization in accordance with 23 U.S.C. § 134.

- (5) 'Regionally significant project' has the same meaning as under 40 Code of Federal Regulations 93.101 (1 July 1998 Edition).
- (6) 'Regional travel demand model' means a model of a region, defined in the model, that is approved by the Department and each Metropolitan Planning Organization whose boundaries include any part of the region and that uses socioeconomic data and projections to predict demands on a transportation network.

"< font=2§ 136-201. Plan for intermodal interface.

When planning a regionally significant transportation project, the Department shall consider design alternatives that will facilitate the cost-effective interface of the project with other existing or planned transportation projects, including highway, airport, rail, bus, bicycle, and pedestrian facilities. The Department of Transportation shall record its consideration of these design alternatives in the planning documents for the project.

"§ 136-202. Metropolitan planning organizations.

(a) Each Metropolitan Planning Organization shall base all transportation plans, metropolitan transportation improvement programs, and conformity determinations on the most recently completed regional travel demand model.

(b) Each Metropolitan Planning Organization shall update its transportation plans in accordance with the scheduling requirements stated in 23 Code of Federal Regulations 450.322 (1 April 1999 Edition).

(c) The Department, the metropolitan planning organizations, and the Department of Environment and Natural Resources shall jointly evaluate and adjust the regions defined in each regional travel demand model at least once every five years and no later than 1 October of the year following each decennial federal census. The evaluation and adjustment shall be based on decennial census data and the most recent populations estimates certified by the State Planning Officer. The adjustment of these boundaries shall reflect current and projected patterns of population, employment, travel, congestion, commuting, and public transportation use and the effects of these patterns on air quality.

(d) The Department shall report on the evaluation and adjustment of the boundaries of the area served by each Metropolitan Planning Organization to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission no later than 1 November of each year in which the regions are evaluated and adjusted.

"§ 136-203. Joint study groups.

The Department and the Department of Environment and Natural Resources shall convene a joint study group to examine options to maximize the positive impacts and minimize the adverse impacts on air quality of transportation investments. A joint study group shall be convened for each major travel corridor in which there has been air

quality violations within the previous fiscal year or that affects an area in which there has been air quality violations within the previous fiscal year. Each joint study group shall include at least 10 members, half of whom shall be appointed by the Secretary of Transportation and half of whom shall be appointed by the Secretary of Environment and Natural Resources. Each group shall include representatives from the Department and the Department of Environment and Natural Resources, affected units of local government, private businesses, and nonprofit public interest organizations. The Department and the Department of Environment and Natural Resources shall jointly report on the work, findings, and recommendations of each joint study group to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on or before 1 October of each year."

Section 4.11. The Department of Transportation and the Department of Environment and Natural Resources shall make the first joint report required by G.S. 136-203, as enacted by Section 4.10 of this act, on or before 1 October 2000.

Section 4.12. G.S. 143-215.94T(a) is amended by adding a new subdivision to read:

"(12) Tank tightness testing procedures and certification of persons who conduct tank tightness tests."

Section 4.13. G.S. 143B-282(a)(2)h. reads as rewritten:

"h. Governing underground tanks used for the storage of oil or hazardous substances ~~or oil~~ pursuant to ~~Article 21 or Article 21A~~ Articles 21, 21A, or 21B of Chapter 143 of the General Statutes. Statutes, including inspection and testing of these tanks and certification of persons who inspect and test tanks."

PART V. MISCELLANEOUS PROVISIONS

Section 5.1. This act shall not be construed to obligate the General Assembly to appropriate any funds to implement the provisions of this act. Every State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to that agency.

Section 5.2. The headings to the Parts of this act are intended as a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 5.3. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 5.4. Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 10:50 a.m. on the 21st day of July, 1999.

H.B. 1160

SESSION LAW 1999-329

AN ACT TO ENACT THE CLEAN WATER ACT OF 1999.

The General Assembly of North Carolina enacts:

PART I. TITLE.

Section 1.1. This act shall be known as the "Clean Water Act of 1999".

PART II. EXTEND MORATORIA ON CONSTRUCTION OR EXPANSION OF SWINE FARMS.

Section 2.1. Subsection (a1) of S.L. 1997-458, as amended by Section 2 of S.L. 1998-188, reads as rewritten:

"(a1) There is hereby established a moratorium on the construction or expansion of swine farms and on lagoons and animal waste management systems for swine farms. The purposes of this moratorium are to allow counties time to adopt zoning ordinances under G.S. 153A-340, as amended by Section 2.1 of this act; to allow time for the completion of the studies authorized by the 1995 General Assembly (1996 Second Extra Session); and to allow the 1999 General Assembly to receive and act on the findings and recommendations of those studies. Except as provided in subsection (b) of this section, the Environmental Management Commission shall not issue a permit for an animal waste management system for a new swine farm or the expansion of an existing swine farm for a period beginning on 1 March 1997 and ending on ~~1 September 1999~~, 1 July 2001. The construction or expansion of a swine farm or animal waste management system for a swine farm is prohibited during the period of the moratorium regardless of the date on which a site evaluation for the swine farm is completed and regardless of whether the animal waste management system is permitted under G.S. 143-215.1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or deemed permitted under 15A North Carolina Administrative Code 2H.0217."

Section 2.2. Section 1.2 of S.L. 1997-458, as amended by Section 3 of S.L. 1998-188, reads as rewritten:

"Section 1.2. (a) As used in this section, 'swine farm' and 'lagoon' have the same meaning as in G.S. 106-802. As used in this section, 'animal waste management system' has the same meaning as in G.S. 143-215.10B. There is hereby established a moratorium for any new or expanding swine farm or lagoon for which a permit is required under Parts 1 or 1A of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii)

that is not in the coastal area as defined by G.S. 113A-103. Effective 1 January 1997, until ~~1 September 1999~~, 1 July 2001, the Environmental Management Commission shall not issue a permit for an animal waste management system, as defined in G.S. 143-215.10B, or for a new or expanded swine farm or lagoon, as defined in G.S. 106-802. The exemptions set out in subsection (b) of Section 1.1 of this act do not apply to the moratorium established under this section.

(b) In order to protect travel and tourism, effective ~~1 September 1999~~, 1 July 2001, no animal waste management system shall be permitted except under an individual permit issued under Part 1 of Article 21 of Chapter 143 of the General Statutes in any county in the State: (i) that has a population of less than 75,000 according to the most recent decennial federal census; (ii) in which there is more than one hundred fifty million dollars (\$150,000,000) of expenditures for travel and tourism based on the most recent figures of the Department of Commerce; and (iii) that is not in the coastal area as defined by G.S. 113A-103."

PART III. EXTEND AND EXPAND PILOT PROGRAM FOR INSPECTION OF ANIMAL WASTE MANAGEMENT SYSTEMS.

Section 3.1. Section 15.4(a) of S.L. 1997-443 reads as rewritten:

"(a) The Department of ~~Environment, Health,~~ Environment and Natural Resources shall develop and implement a pilot program to begin no later than November 1, 1997, and to terminate ~~October 31, 1998~~, 1 July 2001, regarding the annual inspections of animal operations that are subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes. The Department shall select two counties located in a part of the State that has a high concentration of swine farms to participate in this pilot program. In addition, Brunswick County shall be added to the program. Notwithstanding G.S. 143-215.10F, the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall conduct inspections of all animal operations that are subject to a permit under Part 1A of Article 21 of Chapter 143 of the General Statutes in these ~~two~~ three counties at least once a year to determine whether any animal waste management system is causing a violation of water quality standards and whether the system is in compliance with its animal waste management plan or any other condition of the permit. The personnel of the Division of Soil and Water Conservation who are to conduct these inspections in each of these ~~two~~ three counties shall be located in an office in the county in which that person will be conducting inspections. As part of this pilot program, the Department of ~~Environment, Health,~~ Environment and Natural Resources shall establish procedures whereby resources within the local Soil and Water Conservation Districts serving the ~~two~~ three counties are used for the quick response ~~of~~ to complaints and reported problems

previously referred only to the Division of Water ~~Quality~~. Quality of the Department of Environment and Natural Resources."

Section 3.2. The two counties that were selected for the pilot program pursuant to Section 15.4(a) of S.L. 1997-443, Columbus County and Jones County, shall remain in the pilot program. In addition, Brunswick County shall be added to the program.

Section 3.3. The Department of Environment and Natural Resources, in consultation with both the Division of Water Quality and the Division of Soil and Water Conservation, shall submit interim reports no later than 15 October 1999, 15 April 2000, 15 October 2000, 15 April 2001, and a final report no later than 15 July 2001 to the Environmental Review Commission and to the Fiscal Research Division. These reports shall indicate whether the pilot program has increased the effectiveness of the annual inspections program or the response to complaints and reported problems, specifically whether the pilot program had resulted in identifying violations earlier, taking corrective actions earlier, increasing compliance with the animal waste management plans and permit conditions, improving the time to respond to discharges, complaints, and reported problems, improving communications between farmers and Department employees, and any other consequences deemed pertinent by the Department. The final report shall include a recommendation as to whether to continue or expand the pilot program under this act. The Environmental Review Commission may recommend to the 2001 General Assembly whether to continue or expand the pilot program under this act and may make any related legislative proposals.

PART IV. INVENTORY INACTIVE LAGOONS.

Section 4.1. The definitions set out in G.S. 143-215.10B apply to this Part. The definitions set out in this section apply only to this Part and shall not be construed to apply to any regulatory program. As used in this Part:

- (1) "Inactive lagoon" means a lagoon into which animal waste has not been lawfully discharged for a period of one year or more.
- (2) "Lagoon" means a lagoon, as defined in G.S. 106-802, that is a component of an animal waste management system that serves an animal operation.

Section 4.2. The Department of Environment and Natural Resources shall develop an inventory of all inactive lagoons. The Department shall rank each inactive lagoon on the inventory based on the extent to which the lagoon constitutes a threat to public health, the environment, or the State's natural resources. The Department shall submit this inventory to the Environmental Review Commission on or before 1 March 2000.

PART V. INCREASE CIVIL PENALTIES FOR VIOLATIONS OF WATER QUALITY LAWS.

Section 5.1. G.S. 143-215.6A reads as rewritten:

"§ 143-215.6A. *Enforcement procedures: civil penalties.*

(a) A civil penalty of not more than ~~ten thousand dollars (\$10,000)~~ twenty-five thousand dollars (\$25,000) may be assessed by the Secretary against any person who:

- (1) Violates any classification, standard, limitation, or management practice established pursuant to G.S. 143-214.1, 143-214.2, or 143-215.
- (2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.1, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit or any other permit or certification issued pursuant to authority conferred by this Part, including pretreatment permits issued by local governments and laboratory certifications.
- (3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.2.
- (4) Fails to file, submit, or make available, as the case may be, any documents, data, or reports required by this Article or G.S. 143-355(k) relating to water use information.
- (5) Refuses access to the Commission or its duly designated representative to any premises for the purpose of conducting a lawful inspection provided for in this Article.
- (6) Violates a rule of the Commission implementing this Part, Part 2A of this Article, or G.S. 143-355(k).
- (7) Violates or fails to act in accordance with the statewide minimum water supply watershed management requirements adopted pursuant to G.S. 143-214.5, whether enforced by the Commission or a local government.
- (8) Violates the offenses set out in G.S. 143-215.6B.
- (9) Is required, but fails, to apply for or to secure a certificate required by G.S. 143-215.22I, or who violates or fails to act in accordance with the terms, conditions, or requirements of the certificate.
- (10) Violates subsections (c1) through (c5) of G.S. 143-215.1 or a rule adopted pursuant to subsections (c1) through (c5) of G.S. 143-215.1.

(b) If any action or failure to act for which a penalty may be assessed under this section is continuous, the Secretary may assess a penalty not to exceed ~~ten thousand dollars (\$10,000)~~ twenty-five thousand dollars (\$25,000) per day for so long as the violation continues, unless otherwise stipulated.

(b1) The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the two years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per

day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional.

(c) In determining the amount of the penalty the Secretary shall consider the factors set out in G.S. 143B-282.1(b). The procedures set out in G.S. 143B-282.1 shall apply to civil penalty assessments that are presented to the Commission for final agency decision.

(d) The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment.

(e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand dollars (\$10,000) per month may be assessed by the Commission against any local government that fails to adopt a local water supply watershed protection program as required by G.S. 143-214.5, or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement.

(f) Requests for remission of civil penalties shall be filed with the Secretary. Remission requests shall not be considered unless made within 30 days of receipt of the notice of assessment. Remission requests must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B and a stipulation of the facts on which the assessment was based. Consistent with the limitations in G.S. 143B-282.1(c) and (d), remission requests may be resolved by the Secretary and the violator. If the Secretary and the violator are unable to resolve the request, the Secretary shall deliver remission requests and his recommended action to the Committee on Civil Penalty Remissions of the Environmental Management Commission appointed pursuant to G.S. 143B-282.1(c).

(g) If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment, unless the violator contests the assessment as provided in subsection (d) of this section, or requests remission of the assessment in whole or in part as provided in subsection (f) of this section. If any civil penalty has not been paid within 30 days after the final agency decision or court order has been served on the violator, the Secretary shall request the Attorney General to institute a civil action in the

Superior Court of any county in which the violator resides or has his or its principal place of business to recover the amount of the assessment. Such civil actions must be filed within three years of the date the final agency decision or court order was served on the violator.

(h) Repealed by Session Laws 1995 (Regular Session, 1996), c. 743, s. 14.

(h1) The clear proceeds of civil penalties assessed by the Secretary or the Commission pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(i) As used in this subsection, 'municipality' refers to any unit of local government which operates a wastewater treatment plant. As used in this subsection, 'unit of local government' has the same meaning as in G.S. 130A-290. The provisions of this subsection shall apply whenever a municipality that operates a wastewater treatment plant with an influent bypass diversion structure and with a permitted discharge of 10 million gallons per day or more into any of the surface waters of the State that have been classified as nutrient sensitive waters (NSW) under rules adopted by the Commission is subject to a court order which specifies (i) a schedule of activities with respect to the treatment of wastewater by the municipality; (ii) deadlines for the completion of scheduled activities; and (iii) stipulated penalties for failure to meet such deadlines. A municipality as specified herein that violates any provision of such order for which a penalty is stipulated shall pay the full amount of such penalty as provided in the order unless such penalty is modified, remitted, or reduced by the court.

(j) Local governments certified and approved to administer and enforce pretreatment programs by the Commission pursuant to G.S. 143-215.3(a)(14) may assess civil penalties for violations of their respective programs in accordance with the powers conferred upon the Commission and the Secretary in this section, except that actions for collection of unpaid civil penalties shall be referred to the attorney representing the assessing local government. The total of the civil penalty assessed by a local government and the civil penalty assessed by the Secretary for any violation may not exceed the maximum civil penalty for such violation under this section.

(k) A person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may request a review of the assessment by filing a request for review with the local government within 30 days of the date the notice of assessment is received. If a local ordinance provides for a local administrative hearing, the hearing shall afford minimum due process including an unbiased hearing official. The local government shall make a final decision on the request for review within 90 days of the date the request for review is filed. The final decision on a request for review shall be subject to review by the superior court pursuant to Article 27 of Chapter 1 of the General Statutes. If the local ordinance does not

provide for a local administrative hearing, a person who has been assessed a civil penalty by a local government as provided by subsection (j) of this section may contest the assessment by filing a civil action in superior court within 60 days of the date the notice of assessment is received."

Section 5.2. Section 5.1 of this act is effective 1 October 1999 and applies to violations that occur on or after 1 October 1999. Section 5.1 of this act shall not be construed to affect the validity of any civil penalty that is assessed prior to 1 October 1999.

Section 5.3. G.S. 143-215.6A(b1), as enacted by Sections 5.1 and 5.2 of this act, reads as rewritten:

"(b1) The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the ~~two years~~ three years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional."

Section 5.4. Section 5.3 of this act is effective 1 October 2000 and applies to violations that occur on or after 1 October 2000. Section 5.3 of this act shall not be construed to affect the validity of any civil penalty that is assessed prior to 1 October 2000.

Section 5.5. G.S. 143-215.6A(b1), as enacted by Sections 5.1 and 5.2 and amended by Sections 5.3 and 5.4 of this act, reads as rewritten:

"(b1) The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the ~~three years~~ four years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional."

Section 5.6. Section 5.5 of this act is effective 1 October 2001 and applies to violations that occur on or after 1 October 2001. Section 5.5 of this act shall not be construed to affect the validity of any civil penalty that is assessed prior to 1 October 2001.

Section 5.7. G.S. 143-215.6A(b1), as enacted by Sections 5.1 and 5.2 and amended by Sections 5.3, 5.4, 5.5, and 5.6 of this act, reads as rewritten:

"(b1) The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day, against a violator only if a civil penalty has been imposed against the violator within the

~~four years~~ five years preceding the violation. The Secretary may assess a civil penalty of more than ten thousand dollars (\$10,000) or, in the case of a continuing violation, more than ten thousand dollars (\$10,000) per day for so long as the violation continues, for a violation of subdivision (4) of subsection (a) of this section only if the Secretary determines that the violation is intentional."

Section 5.8. Section 5.7 of this act is effective 1 October 2002 and applies to violations that occur on or after 1 October 2002. Section 5.7 of this act shall not be construed to affect the validity of any civil penalty that is assessed prior to 1 October 2002.

PART VI. AUTHORIZE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO DISTRIBUTE FUNDS FROM THE WETLANDS RESTORATION FUND, TO AUTHORIZE SOIL AND WATER CONSERVATION DISTRICTS TO ACQUIRE EASEMENTS UNDER THE CONSERVATION RESERVE ENHANCEMENT PROGRAM, AND TO AUTHORIZE THE DEPARTMENT TO CONVEY INTERESTS IN REAL PROPERTY ACQUIRED UNDER THE WETLANDS RESTORATION PROGRAM OR THE CONSERVATION RESERVE ENHANCEMENT PROGRAM TO FEDERAL AND STATE AGENCIES, LOCAL GOVERNMENTS, AND PRIVATE NONPROFIT CONSERVATION ORGANIZATIONS.

Section 6.1. G.S. 143-214.12 is amended by adding a new subsection to read:

"(a1) The Department may distribute funds from the Wetlands Restoration Fund directly to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A recipient of funds under this subsection shall grant a conservation easement in the real property or interest in real property acquired with the funds to the Department in a form that is acceptable to the Department. The Department may convey real property or an interest in real property that has been acquired under the Wetlands Restoration Program to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A grantee of real property or an interest in real property under this subsection shall grant a conservation easement in the real property or interest in real property to the Department in a form that is acceptable to the Department."

Section 6.2. G.S. 143-214.13 reads as rewritten:

"§ 143-214.13. *Wetlands Restoration Program: reporting requirement.*

(a) The Department of Environment and Natural Resources shall report each year by November 1 to the Environmental Review Commission regarding its progress in implementing the Wetlands Restoration Program and its use of the funds in the Wetlands Restoration Fund. The report shall document statewide wetlands

losses and gains and compensatory mitigation performed under G.S. 143-214.8 through G.S. 143-214.12. The report shall also provide an accounting of receipts and disbursements of the Wetlands Restoration Fund, an analysis of the per-acre cost of wetlands restoration, and a cost comparison on a per-acre basis between the State's ~~Wetland~~ Wetlands Restoration Program and private mitigation banks. The Department shall also send a copy of its report to the Fiscal Research Division of the General Assembly.

(b) The Department shall maintain an inventory of all property that is held, managed, maintained, enhanced, restored, or used to create wetlands under the Wetlands Restoration Program. The inventory shall also list all conservation easements held by the Department. The inventory shall be included in the annual report required under subsection (a) of this section."

Section 6.3. G.S. 113A-235 reads as rewritten:

"§ 113A-235. Conservation easements.

(a) Ecological systems and appropriate public use of these systems may be protected through conservation easements, including conservation agreements under Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements ~~Act~~, Act, and conservation easements under the Conservation Reserve Enhancement Program. The Department of Environment and Natural Resources shall work cooperatively with State and local agencies and qualified nonprofit organizations to monitor compliance with conservation easements and conservation agreements and to ensure the continued viability of the protected ecosystems. Soil and water conservation districts established under Chapter 139 of the General Statutes may acquire easements under the Conservation Reserve Enhancement Program by purchase or gift.

(b) The Department may convey real property or an interest in real property that has been acquired under the Conservation Reserve Enhancement Program to a federal or State agency, a local government, or a private, nonprofit conservation organization to acquire, manage, and maintain real property or an interest in real property for the purposes set out in subsection (a) of this section. A grantee of real property or an interest in real property under this subsection shall grant a conservation easement in the real property or interest in real property to the Department in a form that is acceptable to the Department.

(c) The Department shall report on the implementation of this Article to the Environmental Review Commission no later than 1 November of each year. The Department shall maintain an inventory of all conservation easements held by the Department. The inventory shall be included in the report required by this subsection."

PART VII. AUTHORIZE TEMPORARY RULES TO PROTECT THE CAPE FEAR, CATAWBA, AND TAR-PAMLICO RIVER BASINS.

Section 7.1. Notwithstanding G.S. 150B-21.1(a)(2) and Section 8.6 of S.L. 1997-458, the Environmental Management Commission may adopt temporary rules as provided in this section to protect water quality standards and uses as required to implement basinwide water quality management plans for the Cape Fear, Catawba, and Tar-Pamlico River Basins pursuant to G.S. 143-214.1, 143-214.7, 143-215.3, and 143B-282. Prior to the adoption of a temporary rule under this subsection, the Commission shall:

- (1) Consult with persons who may be interested in the subject matter of the temporary rule during the development of the text of the proposed temporary rule.
- (2) Publish a notice of intent to adopt a temporary rule in the North Carolina Register. The notice shall set out the text of the proposed temporary rule and include the name of the person to whom questions and written comment on the proposed rule may be submitted. The Commission shall accept written comment on the proposed temporary rule for at least 30 days after the notice of intent to adopt the temporary rule is published in the North Carolina Register.
- (3) Hold a public hearing on the proposed temporary rule in the river basin to which the proposed temporary rule applies.

Section 7.2. Notwithstanding 26 NCAC 2C.0102(11), Section 7.1 of this act shall continue in effect until 1 July 2001.

Section 7.3. This Part shall not be construed to invalidate any development and implementation of basinwide water quality management plans by the Environmental Management Commission and the Department of Environment and Natural Resources that has occurred prior to the date this Part becomes effective.

PART VIII. REQUIRE REPORTS TO WASTEWATER SYSTEM CUSTOMERS ON SYSTEM PERFORMANCE AND PUBLICATION OF NOTICE OF DISCHARGES OF UNTREATED WASTEWATER, UNTREATED WASTE, OR ANIMAL WASTE.

Section 8.1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-215.1C. Report to wastewater system customers on system performance; publication of notice of discharge of untreated wastewater and waste.

(a) Report to Wastewater System Customers. -- The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part, shall provide to the users or customers of the collection system or treatment works and to the Department an annual report that summarizes the performance of the collection system or treatment works and the extent to which the collection system or treatment works has violated the permit or federal or State laws, regulations, or rules related to the protection of water quality. The report shall be prepared on either a

calendar or fiscal year basis and shall be provided no later than 60 days after the end of the calendar or fiscal year.

(b) Publication of Notice of Discharge of Untreated Wastewater. -- The owner or operator of any wastewater collection or treatment works, the operation of which is primarily to collect or treat municipal or domestic wastewater and for which a permit is issued under this Part shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated wastewater to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

(2) In the event of a discharge of 15,000 gallons or more of untreated wastewater to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned 'NOTICE OF DISCHARGE OF UNTREATED SEWAGE'. The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days of the discharge. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection.

(c) Publication of Notice of Discharge of Untreated Waste. -- The owner or operator of any wastewater collection or treatment works, other than a wastewater collection or treatment works the operation of which is primarily to collect or treat municipal or domestic wastewater, for which a permit is issued under this Part shall:

(1) In the event of a discharge of 1,000 gallons or more of untreated waste to the surface waters of the State, issue a press release to all print and electronic news media that

provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

- (2) In the event of a discharge of 15,000 gallons or more of untreated waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned 'NOTICE OF DISCHARGE OF UNTREATED WASTE'. The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days of the discharge. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection."

Section 8.2. G.S. 143-215.10C is amended by adding a new subsection to read:

"(h) The owner or operator of an animal waste management system shall:

- (1) In the event of a discharge of 1,000 gallons or more of animal waste to the surface waters of the State, issue a press release to all print and electronic news media that provide general coverage in the county where the discharge occurred setting out the details of the discharge. The owner or operator shall issue the press release within 48 hours after the owner or operator has determined that the discharge has reached the surface waters of the State. The owner or operator shall retain a copy of the press release and a list of the news media to which it was distributed for at least one year after the discharge and shall provide a copy of the press release and the list of the news media to which it was distributed to any person upon request.

- (2) In the event of a discharge of 15,000 gallons or more of animal waste to the surface waters of the State, publish a notice of the discharge in a newspaper having general circulation in the county in which the discharge occurs and in each county downstream from the point of discharge that is significantly affected by the discharge. The Secretary shall determine, at the Secretary's sole discretion, which counties are significantly affected by the discharge and shall approve the form and content of the notice and the newspapers in which the notice is to be published. The notice shall be captioned 'NOTICE OF DISCHARGE OF ANIMAL WASTE'. The owner or operator shall publish the notice within 10 days after the Secretary has determined the counties that are significantly affected by the discharge and approved the form and content of the notice and the newspapers in which the notice is to be published. The owner or operator shall file a copy of the notice and proof of publication with the Department within 30 days of the discharge. Publication of a notice of discharge under this subdivision is in addition to the requirement to issue a press release under subdivision (1) of this subsection."

PART IX. PILOT PROGRAM FOR INSPECTION OF MUNICIPAL AND DOMESTIC WASTEWATER TREATMENT WORKS.

Section 9.1. The Department of Environment and Natural Resources shall develop and implement a pilot program to begin no later than 1 January 2000 and to terminate 1 July 2001 to inspect and provide technical assistance to municipal and domestic wastewater treatment works for which a permit is required under Part 1 of Article 21 of Chapter 143 of the General Statutes. The Department shall select a county in which there is located a representative cross section of the types of municipal and domestic wastewater treatment works in operation in the State for this pilot program. The Technical Assistance and Certification Unit of the Non-Discharge Branch of the Water Quality Section of the Division of Water Quality in the Department shall conduct an inspection of each municipal and domestic wastewater treatment works for which a permit is required under Part 1 of Article 21 of Chapter 143 of the General Statutes at least once each six months to determine whether the treatment works is in violation of any water quality classification, standard, limitation, or management practice or is in violation of any term, condition, or requirement of the permit for the treatment works. The personnel of the Technical Assistance and Certification Unit of the Non-Discharge Branch of the Water Quality Section of the Division of Water Quality who are assigned to conduct these inspections shall be assigned to an office in the county selected for the pilot program.

Section 9.2. The Division of Water Quality of the Department of Environment and Natural Resources shall submit interim reports no

later than 15 April 2000, 15 October 2000, 15 April 2001, and a final report no later than 15 July 2001 to the Environmental Review Commission and to the Fiscal Research Division on the implementation of the pilot program established by this Part. These reports shall indicate the extent to which the pilot program has improved compliance with the laws governing water quality and has resulted in actual improvements in water quality by earlier identification of violations; reduction in the time required to respond to discharges, complaints, and reported problems; improved communication between owners and operators of treatment works and Department employees; and any other factors deemed pertinent by the Department. The final report shall include a recommendation as to whether to continue or expand the pilot program established by this Part. The Environmental Review Commission may recommend to the 2001 General Assembly whether to continue or expand the pilot program established by this Part.

PART X. ISSUANCE OF PERMITS FOR NEW OR EXPANDED MUNICIPAL OR DOMESTIC WASTEWATER TREATMENT WORKS THAT DISCHARGE TO THE WATERS OF THE STATE.

Section 10.1.G.S. 143-215.1(b) is amended by adding a new subdivision to read:

- "(5) The Commission shall not issue a permit for a new municipal or domestic wastewater treatment works that would discharge to the surface waters of the State or for the expansion of an existing municipal or domestic wastewater treatment works that would discharge to the surface waters of the State unless the applicant for the permit demonstrates to the satisfaction of the Commission that:
- a. The applicant has prepared and considered an engineering, environmental, and fiscal analysis of alternatives to the proposed facility.
 - b. The applicant is in compliance with the applicable requirements of the systemwide municipal and domestic wastewater collection systems permit program adopted by the Commission."

PART XI. ENVIRONMENTAL MANAGEMENT COMMISSION TO DEVELOP ENGINEERING STANDARDS AND IMPLEMENT A PERMIT PROGRAM FOR MUNICIPAL AND DOMESTIC WASTEWATER COLLECTIONS.

Section 11.1. The Environmental Management Commission shall develop engineering standards governing municipal and domestic wastewater collection systems that will allow interconnection of these systems on a regional basis. The Commission shall report on its progress in developing the engineering standards required by this section as a part of each quarterly report the Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

Section 11.2. The Environmental Management Commission shall develop and implement a permit program for municipal and domestic wastewater collection systems on a systemwide basis. The collection system permit program shall provide for performance standards, minimum design and construction requirements, a capital improvement plan, operation and maintenance requirements, and minimum reporting requirements. In order to ensure an orderly and cost-effective phase-in of the collection system permit program, the Commission shall implement the permit program over a five-year period beginning 1 July 2000. The Commission shall issue permits for approximately twenty percent (20%) of municipal and domestic wastewater collection systems that are in operation on 1 July 2000 during each of the five calendar years beginning 1 July 2000 and shall give priority to those collection systems serving the largest populations, those under a moratorium imposed by the Commission under G.S. 143-215.67, and those for which the Department of Environment and Natural Resources has issued a notice of violation for the discharge of untreated wastewater. The Commission shall report on its progress in developing and implementing the collection system permit program required by this section as a part of each quarterly report the Environmental Management Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

PART XII. CLARIFY THAT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES MAY LIMIT TO TWO MILLION DOLLARS RATHER THAN THREE MILLION DOLLARS THE MAXIMUM AMOUNT OF CLEAN WATER GRANTS TO LOCAL GOVERNMENT UNITS WITH HIGH BOND RATINGS AND, FOR CLEAN WATER LOANS FROM BOND FUNDS, TO CHANGE THE TIME BY WHICH A LOCAL GOVERNMENT UNIT MUST SATISFY THE REQUIREMENTS FOR HOLDING A PUBLIC HEARING AND FILING A PETITION FOR A VOTE PRIOR TO DISBURSEMENT OF THE LOAN FUNDS.

Section 12.1. G.S. 159G-3 is amended by adding a new subdivision to read:

"(2a) 'Bond rating' means the numerical rating of a local government unit developed by the North Carolina Municipal Council, Inc., or any successor thereto. The rating formula is based on 100 being a theoretically 'perfect' local government unit and is an assessment of the creditworthiness of the unit. Local government units with a rating below 75 or with no ratings have limited, if any, access to the private markets for financing water and sewer or other debt."

Section 12.2. G.S. 159G-6(a) reads as rewritten:

"(a) Revolving loans and grants.

- (1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving

loans and grants to local government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.

- (2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one local government unit during any fiscal year shall be eight million dollars (\$8,000,000).

- (2a) The maximum principal amount of grants made to any one local government unit during any fiscal year shall be three million dollars (\$3,000,000). The Department of Environment and Natural Resources may limit the maximum principal amount of the grant to two million dollars (\$2,000,000) or two-thirds of the eligible project cost, whichever is less, when the bond rating of the local government unit equals or is greater than 75 during any fiscal year and when one million dollars (\$1,000,000) or one-third of the eligible project cost, whichever is less, is available to the local government unit as a loan from any source.

- (3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his or her responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a local government unit to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the local government unit to provide funds for one or more revolving loans or grants."

Section 12.3. Subsection (c) of Section 10 of S.L. 1998-132 reads as rewritten:

"(c) Application for Loans; Hearings.

- (1) ~~Eligibility/Initial Hearing; Eligibility. --~~

- a. ~~Prior to filing an application for a loan, a~~ A local government unit shall hold a public hearing. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing. The public hearing may be held at any time prior to the disbursement of loan funds under subsection (e) of this section.
- b. All applications for loans shall be filed with the Department of Environment and Natural Resources.

The form of the application shall be prescribed by the Department and shall require any information necessary to determine the eligibility for a loan under the provisions of this section. All applications approved by the Department of Environment and Natural Resources shall be filed with the Local Government Commission. Each applicant shall furnish to the Department of Environment and Natural Resources and the Local Government Commission information in addition or supplemental to the information contained in its application, upon request.

- c. A local government unit shall not be eligible for a loan unless it demonstrates to the satisfaction of the Department of Environment and Natural Resources and the Local Government Commission that:
 1. The applicant is a local government unit;
 2. The applicant has the financial capacity to pay the principal of and interest on its proposed loan as evidenced by the approval of the Local Government Commission;
 3. The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations, and ordinances, whether federal, State, or local; and
 4. The applicant has agreed by official resolution to adopt and place into effect a schedule of fees and charges or the application of other sources of revenue which will provide adequate funds for proper operation, maintenance, and administration of the project and repayment of all principal and interest on the loan.
- (2) Assessment. -- The Department of Environment and Natural Resources may require any applicant to file with its application an assessment of the impact the project for which the funds are sought will have upon meeting the facility needs of the area within which the project is to be located.
- (3) Hearing by the Department of Environment and Natural Resources or the Local Government Commission. -- A public hearing may be held by the Department of Environment and Natural Resources or the Local Government Commission at any time on any application. Public hearings may also be held by the Department of Environment and Natural Resources in its discretion upon written request from any citizen or taxpayer who is a resident of the county or counties in which the project is to be located or a resident of the local government unit that proposes to borrow moneys under this act, if it appears that the public interest will be served by the hearing. The written request shall set forth each objection to the proposed

project or other reason for requesting a hearing on the application and shall contain the name and address of the persons submitting it. In deciding whether to grant a request for a hearing on an application, the Department of Environment and Natural Resources may consider the application, the written objections to the proposed project, and the facility needs and shall determine if the public interest will be served by a hearing. The determination by the Department of Environment and Natural Resources shall be conclusive, and all written requests for a hearing shall be retained as a permanent part of the records pertaining to the application.

- (4) Petition for Vote. -- A petition, demanding that the question of whether to enter into a loan agreement with the State under this act be submitted to voters, may be filed with the clerk of the local government unit applying for the loan within 15 days after the public hearing required by this ~~section.~~ section and prior to the disbursement of loan funds under subsection (e) of this section. The petition's sufficiency shall be determined and a referendum, if any, shall be conducted according to the standards, procedures, and limitations set out in G.S. 159-60 through G.S. 159-62."

PART XIII. STUDIES; REPORTS; MISCELLANEOUS PROVISIONS; EFFECTIVE DATES.

Section 13.1. The Department of Environment and Natural Resources shall submit periodic reports to the Environmental Review Commission on the progress of the State Wetlands Stream Management Advisory Committee no later than 1 November 1999, 1 April 2000, 1 October 2000, and 15 December 2000. As a part of this report, the Department shall evaluate the current federal and State wetlands protection programs and shall develop recommendations to improve and simplify the State's wetlands protection program. The Department shall present interim findings and recommendations, including any legislative proposals, as a part of the 1 April 2000 report and final findings and recommendations, including any legislative proposals, as a part of the 15 December 2000 report.

Section 13.2. The Department of Environment and Natural Resources shall prepare a detailed analysis of discharges of untreated and partially treated municipal and domestic wastewater from publicly and privately owned treatment works and collection systems to determine the causes of these discharges. The analysis shall include both unpermitted discharges and violations of permitted discharges. The Department shall evaluate the extent to which more frequent inspection of these systems would reduce the number and severity of these discharges. In addition, the Department shall develop specific recommendations to: (i) reduce the frequency and severity of discharges of untreated or partially treated municipal and domestic

wastewater from publicly and privately owned treatment works, (ii) reduce the number of point sources and the quantity of waste that is discharged into the surface waters of the State, and (iii) promote the consolidation of municipal and domestic wastewater collection systems and treatment works on a regional basis. The Department shall present interim findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 March 2000 and shall present final findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 15 December 2000.

Section 13.3. The Environmental Management Commission shall study issues related to whether and under what circumstances a privately owned wastewater collection system or treatment works may be required to connect to a publicly owned treatment works in order to protect public health or the environment. The Environmental Management Commission shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 March 2000.

Section 13.4. The Environmental Management Commission shall report on its progress in implementing the Lagoon Conversion Plan pursuant to the letter from Governor James B. Hunt, Jr. to Dr. David Moreau, Chairman, Environmental Management Commission, dated 13 May 1999, as a part of each quarterly report the Environmental Management Commission makes to the Environmental Review Commission pursuant to G.S. 143B-282(b).

Section 13.5. The Commission for Health Services shall study issues related to the proper maintenance of septic tank systems. The Commission shall specifically study measures that prevent the failure of septic tank systems and the harm to public health, the environment, and natural resources that results from the failure of septic tank systems. The Commission for Health Services shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than 1 March 2000.

Section 13.6. The headings to the Parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

Section 13.7. This act shall not be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act. Every State agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to that agency.

Section 13.8. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 13.9. Part III of this act is effective retroactively to 31 October 1998. Part V of this act is effective 1 October 1999 and applies to violations that occur on or after 1 October 1999. G.S.

143-215.1C(a), as enacted by Part VIII of this act, becomes effective 1 January 1999. The first report required by G.S. 143-215.1C(a) shall summarize performance and violations during the 1999 calendar year or during the fiscal year that begins 1 July 1999. G.S. 143-215.1C(b) and (c), as enacted by Part VIII of this act, and G.S. 143-215.10C, as amended by Part VIII of this act, become effective 1 October 1999. Part IX of this act becomes effective 1 July 1999. Part X of this act becomes effective 1 October 1999 and applies to any application for a permit that is submitted to the Department of Environment and Natural Resources on or after that date. Part XII of this act is effective when this act becomes law and applies to grants and revolving loans made on or after that date, in accordance with Chapter 159G of the General Statutes and S.L. 1998-132, as amended by Part XII of this act. Except as otherwise provided in this act, all other Parts and sections of this act are effective when this act becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 10:52 a.m. on the 21st day of July, 1999.

H.B. 303

SESSION LAW 1999-330

AN ACT TO AMEND THE LAWS RELATING TO COMMERCIAL VEHICLE HIGHWAY SAFETY AND WORK ZONE SAFETY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-17.7. Commercial motor vehicle out-of-service fines authorized.

The Commissioner may adopt rules implementing fines for violation of out-of-service criteria as defined in 49 C.F.R. § 390.5. These fines may not exceed the schedule of fines adopted by the Commercial Motor Vehicle Safety Alliance that is in effect on the date of the violations."

Section 2. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-138.2C. Possession of alcoholic beverages while operating a commercial motor vehicle.

A person commits the offense of operating a commercial motor vehicle while possessing alcoholic beverages if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d), upon any highway, any street, or any public vehicular area within the State while having an open or closed alcoholic beverage in the passenger area of the commercial motor vehicle. This section shall not apply to the driver of a commercial motor vehicle that is also an excursion passenger vehicle, a for-hire passenger vehicle, a common carrier of passengers, or a motor home, if the alcoholic beverage is in possession of a passenger or is in the passenger area of the vehicle."

Section 3. G.S. 20-141(j2) reads as rewritten:

"(j2) A person who drives a motor vehicle in a highway work zone at a speed greater than the speed limit set and posted under ~~G.S. 20-141~~ is responsible for an infraction of "Speeding in a Highway Work Zone" and this section shall be required to pay a penalty of ~~not less than one hundred dollars (\$100.00), but not more than two hundred fifty dollars (\$250.00).~~ This penalty shall be imposed in addition to those penalties established in this Chapter. A "highway work zone" is the area between the first sign that informs motorists of the existence of a work zone on a highway and the last sign that informs motorists of the end of the work zone. This subsection applies only if a sign posted at the beginning of the highway work zone states the penalty for speeding in the work zone. The Secretary shall ensure that work zones shall only be posted with penalty signs if the Secretary determines, after engineering review, that the posting is necessary to ensure the safety of the traveling public due to a hazardous condition.

A law enforcement officer issuing a citation for a violation of this section while in a highway work zone shall indicate the vehicle speed and speed limit posted in the work zone. Upon an individual's conviction of a violation of this section while in a highway work zone, the clerk of court shall report that the vehicle was in a work zone at the time of the violation, the vehicle speed, and the speed limit of the work zone to the Division of Motor Vehicles."

Section 4. G.S. 20-309(a) reads as rewritten:

"(a) No ~~self-propelled~~ motor vehicle shall be registered in this State unless the owner at the time of registration has financial responsibility for the operation of such motor vehicle, as provided in this Article. The owner of each motor vehicle registered in this State shall maintain financial responsibility continuously throughout the period of registration.

An owner of a commercial motor vehicle, as defined in G.S. 20-4.01(3d), shall have financial responsibility for the operation of the motor vehicle as required by this section. The financial responsibility for a commercial motor vehicle shall be equal to that required in 49 C.F.R. §§ 387.3, 387.5, 387.7, and 387.11 for for-hire or private motor vehicles transporting property in interstate or intrastate commerce."

Section 4.1. G.S. 20-279.32 reads as rewritten:

"§ 20-279.32. *Exceptions.*

This Article does not apply to a motor vehicle registered under G.S. 20-382 ~~or G.S. 20-382.1~~ by a for-hire motor carrier. This Article does not apply to any motor vehicle owned by the State of North Carolina, nor does it apply to the operator of a vehicle owned by the State of North Carolina who becomes involved in an accident while operating the state-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the State. This Article does not apply to any motor vehicle owned by a county or municipality of the State of North Carolina, nor does it

apply to the operator of a vehicle owned by a county or municipality of the State of North Carolina who becomes involved in an accident while operating such vehicle in the course of the operator's employment as an employee or officer of the county or municipality. This Article does not apply to the operator of a vehicle owned by a political subdivision, other than a county or municipality, of the State of North Carolina who becomes involved in an accident while operating such vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the subdivision providing that the Commissioner finds that the political subdivision has waived any immunity it has with respect to such accidents and has in force an insurance policy or other method of satisfying claims which may arise out of the accident. This Article does not apply to any motor vehicle owned by the federal government, nor does it apply to the operator of a motor vehicle owned by the federal government who becomes involved in an accident while operating the government-owned vehicle if the Commissioner determines that the vehicle at the time of the accident was probably being operated in the course of the operator's employment as an employee or officer of the federal government."

Section 5. G.S. 20-140.3 reads as rewritten:

"§ 20-140.3. *Unlawful use of National System of Interstate and Defense Highways and other controlled-access highways.*

On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access highways, it shall be unlawful for any person:

- (1) To drive a vehicle over, upon, or across any curb, central dividing section or other separation or dividing line on said highways.
- (2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb, separation section, or line on said highways.
- (3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.
- (4) To drive a vehicle onto or from any controlled-access highway except at such entrances and exits as are established by public authority.
- (5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right-of-way of said highways, except in the case of an emergency or as directed by a peace officer, or at designated parking areas.
- (6) To fail to yield the right-of-way when entering the highway to any vehicle already travelling on the highway.
- (7) Notwithstanding any other subdivision of this section, a ~~member of the State Highway Patrol~~ law enforcement officer may cross the median of a divided highway when ~~he~~ the

officer has reasonable grounds to believe that a felony is being or has been committed, has personal knowledge that a vehicle is being operated at a speed or in a manner which is likely to endanger persons or property, or the patrol member officer has reasonable grounds to believe that his the officer's presence is immediately required at a location which would necessitate his crossing a median of a divided highway for this purpose. Fire department vehicles and public or private ambulances and rescue squad emergency service vehicles traveling in response to a fire alarm or other emergency call may cross the median of a divided highway when assistance is immediately required at a location which would necessitate the vehicle crossing a median of a divided highway for this purpose."

Section 6. G.S. 136-89.58 reads as rewritten:

"§ 136-89.58. *Unlawful use of National System of Interstate and Defense Highways and other controlled-access facilities.*

On those sections of highways which are or become a part of the National System of Interstate and Defense Highways and other controlled-access facilities it shall be unlawful for any person:

- (1) To drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line on said highways.
- (2) To make a left turn or a semicircular or U-turn except through an opening provided for that purpose in the dividing curb section, separation, or line on said highways.
- (3) To drive any vehicle except in the proper lane provided for that purpose and in the proper direction and to the right of the central dividing curb, separation section, or line on said highways.
- (4) To drive any vehicle into the main travel lanes or lanes of connecting ramps or interchanges except through an opening or connection provided for that purpose by the Department of Transportation.
- (5) To stop, park, or leave standing any vehicle, whether attended or unattended, on any part or portion of the right-of-way of said highways, except in the case of an emergency or as directed by a peace officer, or as designated parking areas.
- (6) To willfully damage, remove, climb, cross or breach any fence erected within the rights-of-way of said highways.
- (7) ~~Notwithstanding any other subdivision of this section, a member of the State Highway Patrol may cross the median of a divided highway when he has reasonable grounds to believe that a felony is being or has been committed, has personal knowledge that a vehicle is being operated at a speed or in a manner which is likely to endanger persons or property, or the patrol member has reasonable grounds to believe that his presence is immediately required at a~~

~~location which would necessitate his crossing a median of a divided highway for this purpose.~~

Any person who violates any of the provisions of this section shall be guilty of a Class 2 misdemeanor."

Section 7. G.S. 20-16(c) reads as rewritten:

"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

<u>Passing stopped school bus</u>	<u>8</u>
<u>Rail-highway crossing violation</u>	<u>6</u>

<u>Reckless driving</u>	<u>5</u>
<u>Hit and run, property damage only</u>	<u>5</u>
<u>Following too close</u>	<u>5</u>
<u>Driving on wrong side of road</u>	<u>5</u>
<u>Illegal passing</u>	<u>5</u>
<u>Running through stop sign</u>	<u>4</u>
<u>Speeding in excess of 55 miles per hour</u>	<u>4</u>
<u>Failing to yield right-of-way</u>	<u>4</u>
<u>Running through red light</u>	<u>4</u>
<u>No driver's license or license expired more than one year</u>	<u>4</u>
<u>Failure to stop for siren</u>	<u>4</u>
<u>Driving through safety zone</u>	<u>4</u>
<u>No liability insurance</u>	<u>4</u>
<u>Failure to report accident where such report is required</u>	<u>4</u>
<u>Speeding in a school zone in excess of the posted school zone speed limit</u>	<u>4</u>
<u>Possessing alcoholic beverages in the passenger area of a commercial motor vehicle</u>	<u>4</u>
<u>All other moving violations</u>	<u>3</u>
<u>Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle</u>	<u>1</u>

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
 Over length
 Over width
 Over height
 Illegal parking
 Carrying concealed weapon
 Improper plates
 Improper registration
 Improper muffler
~~Public drunk within a vehicle~~
~~Possession of alcoholic beverages~~
 Improper display of license plates or dealers' tags

Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

Section 8. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-16A. Double penalties for offenses committed while operating a commercial motor vehicle.

Any person who commits an offense for which points may be assessed pursuant to the Schedule of Point Values for Violations While

Operating a Commercial Motor Vehicle as provided in G.S. 20-16(c) may be assessed double the amount of any fine or penalty authorized by statute."

Section 9. G.S. 20-4.01(3d) reads as rewritten:

"(3d) Commercial Motor Vehicle. -- Any of the following motor vehicles that are designed or used to transport passengers or property:

a. A Class A motor vehicle that has a combined GVWR of at least 26,001 pounds and includes as part of the combination a towed unit that has a GVWR of at least 10,001 pounds.

b. A Class B motor vehicle.

c. A Class C motor vehicle that meets either of the following descriptions:

1. Is designed to transport 16 or more passengers, including the driver.

2. Is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

d. ~~Any other motor vehicle included by federal regulation in the definition of commercial motor vehicle pursuant to 49 U.S.C. Appdx. § 2716."~~

Section 10. This act becomes effective December 1, 1999, and applies to violations occurring on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 11:50 a.m. on the 21st day of July, 1999.

H.B. 623

SESSION LAW 1999-331

AN ACT TO AMEND THE CHARTER OF THE TOWN OF PLEASANT GARDEN.

The General Assembly of North Carolina enacts:

Section 1. Section 2-1 of the Charter of the Town of Pleasant Garden, being Section 1 of S.L. 1998-205, reads as rewritten:

"Sec. 2-1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Pleasant Garden are as follows:

~~BEGINNING at a point in the southern right-of-way line of Ritters Lake Road (S.R. 3325) at its intersection with the western line of Fentress Township with Sumner Township, and running; thence, along the southern right-of-way line of said Ritters Lake Road, eastwardly approximately 8440 feet to a point; thence, along the western line of tax parcel ACL-3-152-540-9, southeastwardly approximately 500 feet to a point;~~

~~thence, along the western line of tax parcels ACL-3-152-540-46 and 47, southwardly approximately 1750 feet to a point;~~
BEGINNING at a point in the southern right-of-way line of Ritters Lake Road (S.R. 3325) at its intersection with the western line of Fentress Township with Sumner Township, and running; then, along the southern right-of-way line of said Ritters Lake Road, eastwardly approximately 7,840 feet to a point;
thence, along the western line of tax parcel ACL-3-152-540-E-7, southeastwardly approximately 2,000 feet to a point;
thence, along the southern line of tax parcel ACL-3-152-557-E-7, eastwardly approximately 175 feet to a point;
thence, along the western line of tax parcel ACL-3-152-540-47, southwardly approximately 100 feet to a point;
thence, along the southern line of tax parcels ACL-3-152-540-47, 8, and 7, northeastwardly approximately 2140 feet to a point;
thence, along the eastern line of tax parcel ACL-3-152-540-7, northeastwardly approximately 150 feet to a point;
thence, along the southern line of tax parcels ACL-3-152-540-41, 42, and 43, eastwardly approximately 2275 feet to a point;
thence, along the western right-of-way line of Alliance Church Road (N.C. Highway 22), northwardly approximately 500 feet to a point;
thence, crossing said Alliance Church Road, northeastwardly approximately 200 feet to a point in the northern right-of-way line of a proposed new road connecting Alliance Church Road with U. S. Highway 421;
thence, along the northern right-of-way line of said connector road, northeastwardly approximately 1350 feet to a point;
thence, along the southwestern right-of-way line of U. S. Highway 421, southeastwardly approximately 14,400 feet to a point in the western right-of-way line of Hagan-Stone Park Road (S.R. 3411);
thence, along the western right-of-way line of Hagan-Stone Park Road (S.R. 3411), southwardly approximately 2,500 feet to a point;
thence, along the southern line of tax parcel ACL-9-579-411-39, westwardly approximately 350 feet to a point;
thence, along a line of the Pleasant Garden Fire District and across tax parcel ACL-9-579-411-19, southwardly approximately 175 feet to a point in the northern line of tax parcel ACL-9-579-411-43;
thence, along the northern line of said tax parcel ACL-9-579-411-43, eastwardly approximately 300 feet to a point in the western right-of-way line of Hagan-Stone Park Road (S.R. 3411);
thence, along the western right-of-way line of said Hagan-Stone Park Road (S.R. 3411), southwestwardly and westwardly approximately 3,600 feet to a point;
thence, along the eastern line of tax parcel ACL-9-579-422-32, southwardly approximately 1,750 feet to a point;
thence, along the southern line of said tax parcel ACL-9-579-422-32, westwardly approximately 1,900 feet to a point;
thence, along a western line of said tax parcel ACL-9-579-422-32, northwardly approximately 230 feet to a point;

thence, along a northern line of said tax parcel ACL-9-579-422-32 with Hagan-Stone Park, eastwardly approximately 600 feet to a point; thence, along a western line of said tax parcel ACL-9-579-422-32 with Hagan-Stone Park, northwardly approximately 1,200 feet to a point in the southern right-of-way line of Hagan-Stone Park Road (S.R. 3411); thence, along the southern right-of-way line of said Hagan-Stone Park Road (S.R. 3411) northeastwardly approximately 800 feet to a point; thence, along the western line of tax parcels ACL-9-579-422-35 and 23, with Hagan-Stone Park, northwardly approximately 1,530 feet to a point in the southern line of tax parcel ACL-9-579-422-12; thence, along the southern line of said tax parcel ACL-9-579-422-12 with Hagan-Stone Park, westwardly approximately 480 feet to a point; thence, along the western line of said tax parcel ACL-9-579-422-12 with Hagan-Stone Park, northwardly approximately 1,350 feet to a point in the southern right-of-way line of Tabernacle Church Road (S.R. 3412); thence, along the southern right-of-way line of said Tabernacle Church Road (S.R. 3412) westwardly approximately 150 feet to a point; thence, along the eastern line of tax parcel ACL-9-579-422-11 with Hagan-Stone Park southwardly approximately 1,300 feet to a point; thence, along the southern line of tax parcels ACL-9-579-422-11 and 7 and ACL-9-579-477-11, 15, 33, 35, and 26, with Hagan-Stone Park, westwardly approximately 2,100 feet to a point; thence, along the eastern line of tax parcel ACL-9-579-477-25 with Hagan-Stone Park southwardly approximately 280 feet to a point; thence, along the southern line of tax parcels ACL-9-579-477-25, 24, and 41 with Hagan-Stone Park southwestwardly approximately 1,370 feet to a point; thence, along the western line of tax parcel ACL-9-579-477-41 with Hagan-Stone Park, northeastwardly approximately a 700 feet to a point, the southeast corner of tax parcel ACL-9-579-477-40; thence, along the southern line of tax parcels ACL-9-579-477-40 and 43 with Hagan-Stone Park, westwardly approximately 1,350 feet to a point; thence, along the eastern line of tax parcels ACL-9-579-477-43, ACL-3-156-482-2 and 5, ACL-3-156-487-1 and 6 and ACL-9-579-478-8, southwardly approximately 3,800 feet to a point in the southern right-of-way line of Hagan-Stone Park Road (S.R. 3411); thence, along the southern right-of-way line of said Hagan-Stone Park Road (S.R. 3411) eastwardly approximately 2,800 feet to a point; thence, along the eastern line of tax parcel ACL-9-579-478-3 with Hagan-Stone Park, southwardly approximately 125 feet to a point; thence, along the northern line of tax parcel ACL-9-579-478-3 with Hagan-Stone Park, eastwardly approximately 1,200 feet to a point; thence, along the eastern side of tax parcel ACL-9-579-478-3 the following 5 courses:

- (1) Southwardly approximately 500 feet to a point
- (2) Eastwardly approximately 100 feet to a point

(3) Southwardly approximately 975 feet to a point

(4) Westwardly approximately 190 feet to a point

(5) Southwardly approximately 1,300 feet to a point in the southern right-of-way line of Fieldview Road (S.R. 3407);

thence, along the southern right-of-way line of said Fieldview Road (S.R. 3407) southeastwardly and eastwardly approximately 1,700 feet to a point;

thence, along the eastern line of tax parcel ACL-9-577-420-19, southwardly approximately 620 feet to a point;

thence, along the southern line of tax parcel ACL-9-577-420-19, westwardly approximately 300 feet to a point;

thence, along the eastern line of tax parcel ACL-9-577-420-21, southwardly approximately 400 feet to a point;

thence, along the southern line of tax parcels ACL-9-577-420-21, 22, and 23, north westwardly approximately 800 feet to a point;

thence, along the southern line of tax parcels ACL-9-577-420-9 and 26, southwestwardly approximately 1450 feet to a point in the eastern line of tax parcel ACL-9-579-479N-4; thence, along the eastern side of tax parcel ACL-9-579-479N-4, the following 3 courses:

(1) Southwardly approximately 200 feet to a point

(2) Eastwardly approximately 50 feet to a point

(3) Southwardly approximately 1,350 feet to a point, the southeast corner of said tax parcel ACL-9-579-479N-4;

thence, along the southern line of tax parcel ACL-9-579-479N-4, westwardly approximately 1,800 feet to a point;

thence, along the southern line of tax parcel ACL-3-158-479S-15, southwestwardly approximately 280 feet to a point;

thence, along the eastern line of tax parcel ACL-3-158-479S-4, southwardly approximately 200 feet to a point;

thence, along the southern line of said tax parcel ACL-3-158-479S-4, southwestwardly approximately 380 feet to a point in the western right-of-way line of N.C. Highway 22;

thence, along the western right-of-way line of said N.C. Highway 22, southeastwardly approximately 600 feet to a point;

thence, along the southern line of tax parcels ACL-3-158-479S-3, 13, 12, and 17, ACL-3-158-485-11, ACL-3-158-486S-15, 13, and 12, southwestwardly approximately 3,000 feet to a point, the northeastern corner of tax parcel ACL-3-158-485-6;

thence, along the eastern line of said tax parcel ACL-3-158-485-6, southwardly approximately 1,900 feet to a point;

thence, along the southern line of tax parcels ACL-3-158-485-6 and 9, westwardly approximately 1,430 feet to a point in the western right-of-way line of Kearney Road (S.R. 3404);

thence, along the western right-of-way line of said Kearney Road (S.R. 3404), northwardly approximately 300 feet to a point;

thence, along the southern line of tax parcels ACL-3-158-485-6 and ACL-3-158-546-2, westwardly approximately 2,200 feet to a point;

thence, along a western line of tax parcel ACL-3-158-546-2, northwardly approximately 960 feet to a point;

thence, along the southern line of tax parcel ACL-3-158-546-2, westwardly approximately 1,300 feet to a point;

thence, along the eastern line of tax parcels ACL-3-158-546-12, 13, 14, 21, 15, 16, 17, 18, 19, and 20, southwardly approximately 1,600 feet to a point;

thence, along the southern line of tax parcel ACL-3-158-546-20, westwardly approximately 300 feet to a point in the western right-of-way line of Hunt Road (S.R. 3402);

thence, along the western right-of-way line of said Hunt Road (S.R. 3402), southward approximately 650 feet to a point;

thence, along the southern line of tax parcel ACL-3-158-546-3, westwardly approximately 1,000 feet to a point;

thence, along the southern line of tax parcel ACL-3-158-546-7, North westwardly approximately 630 feet to a point;

thence, along the western line of tax parcels ACL-3-158-546-7, and 30, northeastwardly approximately 1,020 feet to a point;

thence, along the southern line of tax parcel ACL-91-6784-551-25 and the southern line of Pleasant Grove Subdivision which is designated at B-Sub of block 551, tax map ACL-91-6784, westwardly approximately 650 feet to a point, the northeast corner of tax parcel ACL-91-6784-551-12;

thence, along the eastern line of said tax parcel ACL-91-6784-551-12, southwardly approximately 500 feet to a point;

thence, along the southern line of said tax parcel ACL-91-6784-551-12, westwardly approximately 520 feet to a point, the northeast corner of Center Subdivision;

thence, along eastern lines of said Center Subdivision, which is designated as A-Sub of block 551, tax map ACL-91-6784, the following 5 courses;

- (1) Southwestwardly approximately 500 feet to a point;
- (2) Southeastwardly approximately 200 feet to a point;
- (3) Southwestwardly approximately 600 feet to a point;
- (4) North westwardly approximately 200 feet to a point;
- (5) Southwestwardly approximately 300 feet to a point;

thence, along the southern line of said Center Subdivision, westwardly approximately 460 feet to a point in the eastern right-of-way line of Branson Mill Road (S.R. 3437);

thence, along the eastern right-of-way line of said Branson Mill Road (S.R. 3437), northeastwardly approximately 100 feet to a point;

thence, along the southern line of tax parcel ACL-91-6784-550N-22, westwardly approximately, 550 feet to a point in the eastern line of tax parcel ACL-91-6784-550N-1;

thence, along the eastern line of said tax parcel ACL-91-6784-550N-1, southwardly approximately 75 feet to a point;

thence, along the southern line of tax parcels ACL-91-6794-550N-1 and 15, westwardly approximately 350 feet to a point;

thence, along the eastern line of tax parcel ACL-91-6784-550N-14, southwardly approximately 700 feet to a point;

thence, along the southern line of said tax parcel ACL-91-6784-550N-14, westwardly approximately 950 feet to a point;

thence, along the western line of tax parcels ACL-91-6784-550N-14, 11, and 21 and ACL-91-6784-551-2 and crossing Hodgkin Valley Road (S.R. 3440), northwardly approximately 2,000 feet to a point;

thence, along the northern line of tax parcels ACL-91-6784-551-2, 17, 5, and 14 and the northern line of Center Subdivision, which is designated as A-Sub of block 551, ACL-91-6784, westwardly approximately 2,170 feet to a point in the eastern right-of-way line of Branson Mill Road (S.R. 3437);

thence, along the eastern right-of-way line of said Branson Mill Road (S.R. 3437), northeastwardly approximately 1,100 feet to a point;

thence, along the southern line of tax parcel ACL-91-6784-551-18, northwestwardly approximately 400 feet to a point;

thence, along the western line of tax parcels ACL-91-6784-551-18 and 8, northwestwardly approximately 1,300 feet to a point;

thence, along the southern line of tax parcels ACL-91-6784-551-8, 24, and 22, westward approximately 950 feet to a point;

thence, along the western line of tax parcels ACL-91-6784-551-22 and 23, northwestwardly approximately 1,050 feet to a point;

thence, along the northern line of tax parcel ACL-91-6784-551-23, northeastwardly approximately 350 feet to a point, the southwest corner of tax parcel ACL-91-6784-552S-6;

thence, along the western line of said tax parcel ACL-91-6784-552S-6, northwardly approximately 750 feet to a point;

thence, along the southern line of tax parcels ACL-91-6784-552S-6 and 5, southwestwardly approximately 1,800 feet to a point in the eastern line of tax parcel ACL-91-6784-611S-3;

thence, along the southeastern line of said tax parcel ACL-91-6784-611S-3 as it meanders southwestwardly approximately 840 feet to a point;

thence, along the southern line of said tax parcel ACL-91-6784-611S-3, southwestwardly approximately 620 feet to a point;

thence, along the southwestern line of said tax parcel ACL-91-6784-611S-3, as it meanders northwestwardly approximately 875 feet to a point in the southern right-of-way line of Robolo Road (S.R. 3439);

thence, along the southern right-of-way line of said Robolo Road (S.R. 3439) southwestwardly; approximately 900 feet to its intersection with the western line of Davis Mill Road;

thence, along the western line of Davis Mill Road, northwardly approximately 7820 feet to a point in the northern line of tax parcel ACL-9-635-609-19;

thence, along the northern line of tax parcel ACL-9-635-609-19, southeastwardly approximately 470 feet to a point in the western line of Davis Mill Road (S.R. 3433);

thence, along the western line of said Davis Mill Road (S.R. 3433), northeastwardly approximately 3,050 feet to a point;

thence, along the southern line of Nocho Park Subdivision which is designated as B-Sub of block 609, ACL-9-635, westwardly approximately 1,350 feet to a point;
 thence, along the western line of said Nocho Park Subdivision, northwardly approximately 1,350 feet to a point in the northern right-of-way line of Sheraton Park (S.R. 3426);
 thence, along the northern right-of-way line of said Sheraton Park Road (S.R. 3426) westwardly approximately 1440 feet to its intersection with the western line of Fentress Township with Sumner Township;
 thence, along the western line of Fentress Township with Sumner Township, northwardly approximately 8180 feet to the point of BEGINNING."

Section 1.1. Section 5-4 of the Charter of the Town of Pleasant Garden, being S.L. 1997-344 as enacted by Section 3 of S.L. 1999-57, is repealed.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

Became law on the date it was ratified.

S.B. 1149

SESSION LAW 1999-332

AN ACT TO MODIFY PERMISSIBLE FEES WHICH MAY BE CHARGED IN CONNECTION WITH HOME LOANS SECURED BY FIRST MORTGAGE OR FIRST DEED OF TRUST, TO IMPOSE RESTRICTIONS AND LIMITATIONS ON HIGH-COST HOME LOANS, TO REVISE THE PERMISSIBLE FEES AND CHARGES ON CERTAIN LOANS, TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS, AND TO PROVIDE FOR PUBLIC EDUCATION AND COUNSELING ABOUT PREDATORY LENDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1A reads as rewritten:

"§ 24-1.1A. *Contract rates on home loans secured by first mortgages or first deeds of trust.*

(a) Notwithstanding any other provision of this ~~Chapter~~, Chapter, but subject to the provisions of G.S. 24-1.1E, parties to a home loan may contract in writing as follows:

- (1) Where the principal amount is ten thousand dollars (\$10,000) or more the parties may contract for the payment of interest as agreed upon by the parties;
- (2) Where the principal amount is less than ten thousand dollars (\$10,000) the parties may contract for the payment of interest as agreed upon by the parties, if the lender is either
 - (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the ~~Veterans Administration~~, Department of Veterans

Affairs, a national mortgage association or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union or insurance company; or (iii) a State or federal agency;

- (3) Where the principal amount is less than ten thousand dollars (\$10,000) and the lender is not a lender described in the preceding subdivision (2) the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.
- (4) Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act, the lender may charge interest to be computed only on the following basis: monthly on the outstanding principal balance at a rate not to exceed the rate provided in this subdivision.

On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent ($1/2$ of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one-half of one percent ($1/2$ of 1%), the Commissioner shall round downward to the lower one-half of one percent ($1/2$ of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

An affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act may not make a home loan for a term in excess of six (6) months which provides for a balloon payment. For purposes of this subdivision, a balloon payment means any scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection does not apply to equity lines of credit as defined in G.S. 45-81.

~~(b) No prepayment fees shall be contracted by the borrower and lender with respect to any home loan where the principal amount borrowed is one hundred thousand dollars (\$100,000) or less; otherwise a lender and a borrower may agree on any terms as to the prepayment of a home loan. Except as provided in subdivision (1) of this subsection, a lender and a borrower may agree on any terms as to the prepayment of a home loan.~~

(1) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home loan in which: (i) the principal amount borrowed is one hundred fifty thousand dollars (\$150,000) or less, (ii) the borrower is a natural person, (iii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iv) the loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) The limitations on prepayment fees and penalties contained in subdivision (b)(1) of this section shall not apply to the extent state law limitations on prepayment fees and penalties are preempted by federal law or regulation.

~~(c) Except as limited by subsection (b) above, a lender may charge to the borrower the fees described in G.S. 24-10. Provided, if the loan is one described in subsection (a)(1) or subsection (a)(2) above, the parties may agree to the payment of discount points, commitment fees, finance charges, or other similar charges agreed upon by the parties notwithstanding the provisions of any state law limiting the amount of discount points, commitment fees, finance charges or other similar charges which may be charged, taken, received or reserved with respect to a home loan. Provided further, that no lender on loans under G.S. 24-1.1A(a)(3) may charge or receive any fees or discount points other than the interest permitted in G.S. 24-1.1A(a)(3). If the home loan is one described in subdivision (a)(1) or subdivision (a)(2) of this section, the lender may charge the borrower the following fees and charges in addition to interest and other fees and charges as permitted in this section and late payment charges as permitted in G.S. 24-10.1:~~

(1) At or before loan closing, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:

- a. Loan application, origination, and commitment fees;
- b. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of the interest rate or time-price differential;

- c. Assumption fees to the extent permitted by G.S. 24-10(d);
 - d. Appraisal fees to the extent permitted by G.S. 24-10(h);
 - e. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and
 - f. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the principal amount of the loan, or (ii) one hundred fifty dollars (\$150.00).
- (2) Except as provided in subsection (g) of this section with respect to the deferral of loan payments, upon modification, renewal, extension, or amendment of any of the terms of a home loan, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:
- a. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of, the interest rate or time-price differential;
 - b. Assumption fees to the extent permitted by G.S. 24-10(d);
 - c. Appraisal fees to the extent permitted by G.S. 24-10(h);
 - d. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and
 - e. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or (ii) one hundred fifty dollars (\$150.00). The fees and charges permitted by this sub-subdivision may be charged only pursuant to a written agreement which states the amount of the fee or charge and is made at the time of the specific modification, renewal, extension, or amendment, or at the time the specific modification, renewal, extension, or amendment is requested.
- (c1) No lender on home loans under subdivision (a)(3) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) to the extent permitted by G.S. 24-8(d), sums

for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (ii) interest as permitted in subdivision (a)(3) of this section; and (iii) late payment charges to the extent permitted by G.S. 24-10.1.

(c2) No lender on home loans under subdivision (a)(4) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) the fees described in G.S. 24-10; (ii) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (iii) interest as permitted in subdivision (a)(4) of this section; and (iv) late payment charges to the extent permitted by G.S. 24-10.1.

(d) The loan or investments regulated by G.S. 53-45 shall not be subject to the provisions of this section.

(e) The term "home loan" shall mean a ~~loan~~ loan, other than an open-end credit plan, where the principal amount is less than three hundred thousand dollars (\$300,000) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units.

(f) Any home loan obligation existing before June 13, 1977, shall be construed with regard to the law existing at the time the home loan or commitment to lend was made and this act shall only apply to home loans or loan commitments made from and after June 13, 1977; provided, however, that variable rate home loan obligations executed prior to April 3, 1974, which by their terms provide that the interest rate shall be decreased and may be increased in accordance with a stated cost of money formula or other index shall be enforceable according to the terms and tenor of said written obligations.

(g) The parties to a home loan governed by ~~G.S. 24-1.1A(a) (1) or (2)~~ subdivision (a)(1) or (2) of this section may contract ~~in writing~~ to defer ~~payments of interest~~ the payment of all or part of one or more ~~unpaid installments~~ and for payment of interest on deferred interest as agreed upon by the parties. The parties may agree ~~in writing~~ that ~~said~~ deferred interest may be added to the principal balance of the loan. This subsection shall not be construed to limit payment of interest upon interest in connection with other types of loans. ~~Except as restricted by G.S. 24-1.1E, the lender may charge deferral fees as may be agreed upon by the parties to defer the payment of one or more unpaid installments. If the home loan is of a type described in subdivision (1) of this subsection, the deferral fees shall be subject to the limitations set forth in subdivision (2) of this subsection:~~

(1) A home loan will be subject to the deferral fee limitations set forth in subdivision (2) of this subsection if:

a. The borrower is a natural person;

- b. The debt is incurred by the borrower primarily for personal, family, or household purposes; and
 - c. The loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.
- (2) Deferral fees for home loans identified in subdivision (1) of this subsection shall be subject to the following limitations:
- a. Deferral fees may be charged only pursuant to an agreement which states the amount of the fee and is made at the time of the specific deferral or at the time the specific deferral is requested; provided, that if the agreement relates to an installment which is then past due for 15 days or more, the agreement must be in writing and signed by at least one of the borrowers. For purposes of this subdivision an agreement will be considered a signed writing if the lender receives from at least one of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.
 - b. Deferral fees may not exceed the greater of five percent (5%) of each installment deferred or fifty dollars (\$50.00), multiplied by the number of complete months in the deferral period. A month shall be measured from the date an installment is due. The deferral period is that period during which no payment is required or made as measured from the date on which the deferred installment would otherwise have been due to the date the next installment is due under the terms of the note or the deferral agreement.
 - c. If a deferral fee has once been imposed with respect to a particular installment, no deferral fee may be imposed with respect to any future payment which would have been timely and sufficient but for the previous deferral.
 - d. If a deferral fee is charged pursuant to a deferral agreement, a late charge may be imposed with respect to the deferred payment only if the amount deferred is not paid when due under the terms of the deferral agreement and no new deferral agreement is entered into with respect to that installment.
 - e. No lender may charge a deferral fee for modifying or extending the maturity date of a loan or the date a balloon payment is due; provided, however, that any such modification or extension of the loan maturity date or the date a balloon payment is due shall, to the extent applicable, be considered a modification or extension

subject to the provisions of subdivision (c)(2) of this section.

(h) The parties to a home loan governed by ~~G.S. 24-1.1A(a) (1) or (2)~~ subdivision (a)(1) or (2) of this section may agree in writing to a mortgage or deed of trust which provides that periodic payments may be graduated during parts of or over the entire term of the loan. The parties to such a loan may also agree in writing to a mortgage or deed of trust which provides that periodic disbursements of part of the loan proceeds may be made by the lender over a period of time agreed upon by the parties, or over a period of time agreed upon by the parties ending with the death of the borrower(s). Such mortgages or deeds of trust may include provisions for adding deferred interest to principal or otherwise providing for charging of interest on deferred interest as agreed upon by the parties. This subsection shall not be construed to limit other types of mortgages or deeds of trust or methods or plans of disbursement or repayment of loans that may be agreed upon by the parties.

(i) Nothing in this section shall be construed to authorize or prohibit a lender, a borrower, or any other party to pay compensation to a mortgage broker or a mortgage banker for services provided by the mortgage broker or the mortgage banker in connection with a home loan."

Section 2. Chapter 24 of the General Statutes is amended by adding a new section to read:

"§ 24-1.1E. Restrictions and limitations on high-cost home loans.

(a) Definitions. -- The following definitions apply for the purposes of this section:

- (1) 'Affiliate' means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time to time.
- (2) 'Annual percentage rate' means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time).
- (3) 'Bona fide loan discount points' means loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.
- (4) A 'high-cost home loan' means a loan other than an open-end credit plan or a reverse mortgage transaction in which:
 - a. The principal amount of the loan does not exceed the lesser of (i) the conforming loan size limit for a single-

family dwelling as established from time to time by the Federal National Mortgage Association, or (ii) three hundred thousand dollars (\$300,000);

- b. The borrower is a natural person;
 - c. The debt is incurred by the borrower primarily for personal, family, or household purposes;
 - d. The loan is secured by either (i) a security interest in a manufactured home (as defined in G.S. 143-147(7)) which is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and
 - e. The terms of the loan exceed one or more of the thresholds as defined in subdivision (6) of this section.
- (5) 'Points and fees' means:
- a. All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;
 - b. All charges for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase 'points and fees';
 - c. All compensation paid directly by the borrower to a mortgage broker not otherwise included in sub-subdivision a. or b. of this subdivision;
 - d. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents; and
 - e. 'Points and fees' shall not include (i) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and (ii) fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under sub-subdivision a. of this

subdivision; title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

(6) 'Thresholds' means:

- a. Without regard to whether the loan transaction is or may be a 'residential mortgage transaction' (as the term 'residential mortgage transaction' is defined in section 226.2(a)(24) of Title 12 of the Code of Federal Regulations, as amended from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a 'mortgage' under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;
- b. The total points and fees payable by the borrower at or before the loan closing exceed (i) five percent (5%) of the total loan amount if the total loan amount is twenty thousand dollars (\$20,000) or more, or (ii) the lesser of eight percent (8%) of the total loan amount or one thousand dollars (\$1,000), if the total loan amount is less than twenty thousand dollars (\$20,000); provided, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:
 1. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;
 2. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

3. Prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan closing; or
- c. The loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid.
- (7) 'Total loan amount' means the same as the term 'total loan amount' as used in section 226.32 of Title 12 of the Code of Federal Regulations, and the same shall be calculated in accordance with the Federal Reserve Board's Official Staff Commentary thereto.
- (b) Limitations. -- A high-cost home loan shall be subject to the following limitations:
 - (1) No call provision. -- No high-cost home loan may contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.
 - (2) No balloon payment. -- No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.
 - (3) No negative amortization. -- No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.
 - (4) No increased interest rate. -- No high-cost home loan may contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.
 - (5) No advance payments. -- No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.
 - (6) No modification or deferral fees. -- A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

(c) Prohibited Acts and Practices. -- The following acts and practices are prohibited in the making of a high-cost home loan:

- (1) No lending without home-ownership counseling. -- A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the North Carolina Housing Finance Agency that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.
- (2) No lending without due regard to repayment ability. -- As used in this subsection, the term 'obligor' refers to each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, no presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor's monthly gross income.
- (3) No financing of fees or charges. -- In making a high-cost home loan, a lender may not directly or indirectly finance:
 - a. Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced;
 - b. Any points and fees; or
 - c. Any other charges payable to third parties.
- (4) No benefit from refinancing existing high-cost home loan with new high-cost home loan. -- A lender may not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder.

- (5) Restrictions on home-improvement contracts. -- A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than (i) by an instrument payable to the borrower or jointly to the borrower and the contractor, or (ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.

(d) Unfair and Deceptive Acts or Practices. -- Except as provided in subsection (e) of this section, the making of a high-cost home loan which violates any provisions of subsection (b) or (c) of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) the structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this section when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan, or (ii) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section, or (iii) any other such subterfuge. The Attorney General, the Commissioner of Banks, or any party to a high-cost home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(e) Corrections and Unintentional Violations. -- A lender in a high-cost home loan who, when acting in good faith, fails to comply with subsections (b) or (c) of this section, will not be deemed to have violated this section if the lender establishes that either:

- (1) Within 30 days of the loan closing and prior to the institution of any action under this section, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or
- (2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within 60 days after the discovery of the compliance failure and prior to the institution of any action under this section or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate

restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(f) Severability. -- The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this section is declared to be inapplicable to any specific category, type, or kind of points and fees, the provisions of this section shall nonetheless continue to apply with respect to all other points and fees."

Section 3. Chapter 24 of the General Statutes is amended by adding a new section to read:

"§ 24-2.5. Mortgage bankers and mortgage brokers.

A mortgage broker or a mortgage banker originating a loan in a table-funded loan transaction in which the mortgage broker or mortgage banker is identified as the original payee of the note shall be considered a lender for purposes of this Chapter."

Section 4. G.S. 24-8 reads as rewritten:

"§ 24-8. Loans not in excess of \$300,000; what interest, fees and charges permitted.

No lender shall charge or receive from any borrower or require in connection with a loan any borrower, directly or indirectly, to pay, deliver, transfer or convey or otherwise confer upon or for the benefit of the lender or any other person, firm or corporation any sum of money, thing of value or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the North Carolina General Statutes, where the principal amount of a loan is not in excess of three hundred thousand dollars (\$300,000.00); provided, this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan; provided that this shall not prevent the lender from collecting from the borrower for remittance to others, money in payment of taxes, assessments, cost of upkeep, recording fees, surveys, attorneys' fees, fire, title, life, accident and health, unemployment, and mortgage insurance premiums and other such fees and costs, nor from receiving the proceeds from any insurance policies where a loss occurs under the terms of such

~~policies. This section shall not be applicable to any corporation licensed as a "Small Business Investment Company" under the provisions of the United States Code Annotated, Title 15, section 661, et seq., nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange.~~

(a) If the principal amount of a loan is less than three hundred thousand dollars (\$300,000), no lender shall charge or receive from any borrower or require in connection with any loan any borrower, directly or indirectly, to pay, deliver, transfer, or convey or otherwise confer upon or for the benefit of the lender or any other person, firm, or corporation any sum of money, thing of value, or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the General Statutes.

(b) Notwithstanding any contrary provision of State law, if the principal amount of a loan is three hundred thousand dollars (\$300,000) or more, any borrower may agree to pay, and any lender or other person may charge and collect from the borrower, interest, fees, and other charges as may be agreed upon between the parties, and the borrower and anyone claiming by or through the borrower is prohibited from asserting usury as a claim or defense.

(c) The provisions of this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm, or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan.

(d) Notwithstanding any contrary provision of State law, any lender may collect money from the borrower for the payment of (i) bona fide loan-related goods, products, and services provided or to be provided by third parties, and (ii) taxes, filing fees, recording fees, and other charges and fees paid or to be paid to public officials. No third party shall charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed. Loan-related goods, products, and services include fees for tax payment services, fees for flood certification, fees for pest-infestation determinations, mortgage brokers' fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

(e) Notwithstanding any contrary provision of State law, any lender may receive the proceeds from any insurance policies where loss occurs under the terms of such policies.

(f) This section shall not be applicable to any corporation licensed as a 'Small Business Investment Company' under the provisions of the United States Code Annotated, Title 15, section 66, et seq., nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange."

Section 5. Chapter 24 of the General Statutes is amended by adding a new section to read:

"§ 24-10.2. Consumer protections in certain home loans.

(a) For purposes of this section, the term 'consumer home loan' shall mean a loan in which (i) the borrower is a natural person, (ii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(b) Notwithstanding the provisions of G.S. 58-57-35(b), it shall be unlawful for any lender in a consumer home loan to finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums; provided, that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(c) No lender may knowingly or intentionally engage in the unfair act or practice of 'flipping' a consumer home loan. 'Flipping' a consumer loan is the making of a consumer home loan to a borrower which refinances an existing consumer home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds specified in G.S. 24-1.1E(a)(6).

(d) No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a consumer home loan that refinances all or any portion of such existing loan or debt.

(e) The making of a consumer home loan which violates the provisions of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The Attorney General, the Commissioner of Banks, or any party to a consumer home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(f) In any suit instituted by a borrower who alleges that the defendant violated this section, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

(1) The party charged with the violation has willfully engaged in the act or practice, and there was unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or

(2) The party instituting the action knew, or should have known, that the action was frivolous and malicious.

(g) This section establishes specific consumer protections in consumer home loans in addition to other consumer protections that may be otherwise available by law."

Section 6. Of the funds appropriated to the Department of Justice for the 1999-2000 fiscal year, the sum of one hundred thousand dollars (\$100,000) may be used to develop and implement a program of consumer counseling or awareness designed to inform the public about the methods by which predatory lenders impose unconscionable and noncompetitive fees and charges as part of complex home mortgage transactions, to protect the public from incurring such fees and charges, and otherwise to encourage the informed and responsible use of credit.

Section 7. The Legislative Research Commission shall study the implementation and enforcement of this act including:

- (1) Whether the provisions of this act have a measurable effect on the availability of credit in the State;
- (2) Whether the act is successfully reducing the predatory lending practices proscribed by the act; and
- (3) Whether there are specific circumstances in which consumers would benefit from permitting a lender to finance credit insurance premiums, which practice is prohibited by G.S. 24-10.2(b).

The Commission shall report their findings and recommendations on the issue of financing credit insurance premiums to the 2000 Regular Session of the 1999 General Assembly. The Commission may report their findings and recommendations to the 2001 General Assembly and shall make a final report to the 2002 Regular Session of the 2001 General Assembly.

Section 8. Section 2 of this act and G.S. 24-10.2(b), as enacted in Section 5 of this act, become effective July 1, 2000, and apply to loans made or entered into on or after that date. Section 6 of this act becomes effective July 1, 1999. Section 7 of this act is effective when this act becomes law. The remainder of this act becomes effective October 1, 1999, and applies to loans made or entered into, payments deferred, and loans modified, renewed, extended, or amended on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law upon approval of the Governor at 10:35 a.m. on the 22nd day of July, 1999.

H.B. 74

SESSION LAW 1999-333

AN ACT TO AUTHORIZE THE APPOINTMENT BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT PRO TEMPORE OF THE SENATE OF MEMBERS OF THE BOARD OF DIRECTORS OF THE CERTIFICATION ENTITY FOR THE PHASE II SETTLEMENT FUNDS, TO PROVIDE THE MEMBERS OF THE BOARD OF DIRECTORS LIMITED IMMUNITY FROM CIVIL LIABILITY, TO PROVIDE AN EXEMPTION FROM STATE INCOME TAX FOR INTEREST, INVESTMENT EARNINGS, AND GAINS OF CERTAIN TRUST FUNDS, TO PROVIDE A CORPORATE INCOME TAX CREDIT FOR MANUFACTURERS PRODUCING CIGARETTES FOR EXPORTATION TO A FOREIGN COUNTRY, AND TO PROHIBIT THE SALE OF CERTAIN PACKAGES OF CIGARETTES.

The General Assembly of North Carolina enacts:

Section 1.(a) The General Assembly finds that:

- (1) Philip Morris, Inc., Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, and R.J. Reynolds Tobacco Company (hereinafter, the "tobacco companies") have proposed to create a National Tobacco Grower Settlement Trust under which the tobacco companies will pay, during a 12-year period, a base amount of approximately five billion one hundred fifty million dollars (\$5,150,000,000) into a trust to provide payments to tobacco growers and allotment holders in 14 grower states, including North Carolina, for the purposes of ameliorating potential adverse economic consequences of likely changes in the tobacco market on grower states.
- (2) The tobacco companies desire that the money paid into the trust be divided among tobacco producers and allotment holders in accordance with a plan designed and approved by a certification entity in each state.
- (3) The tobacco companies desire that in larger grower states, including North Carolina, the certification entity be a nonprofit corporation governed by a board of directors consisting of the following public officials and persons appointed by public officials: the Governor, who shall serve as chair of the board of directors; the Commissioner of Agriculture, who shall serve as vice-chair; the Attorney General, who shall serve as secretary; a State Senator appointed by the President Pro Tempore of the Senate; a

State Representative appointed by the Speaker of the House of Representatives; two members of the North Carolina congressional delegation selected by the delegation; and four to seven citizens appointed by the Governor.

- (4) It is in the public interest that these officials and citizens serve on the board of directors and determine the distribution of these private trust funds to tobacco producers and allotment holders in North Carolina.

Section 1.(b) The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate are authorized to appoint members of the board of directors of the certification entity as provided in Section 1.(a)(3), and the public officials referred to in Section 1.(a)(3) are authorized to serve on that board.

Section 1.(c) No member of the certification entity for the National Tobacco Grower Trust Fund is subject to civil liability for any act or omission arising out of the performance of the member's duties as a member or officer of the certification entity. This section does not apply to liability arising from willful or wanton misconduct, intentional wrongdoing, or the operation of a motor vehicle.

Section 2. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

- (18) Interest, investment earnings, and gains of a trust, the settlors of which are two or more manufacturers that signed a settlement agreement with this State to settle existing and potential claims of the State against the manufacturers for damages attributable to a product of the manufacturers, if the trust meets all of the following conditions:
- a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.
 - b. A court of this State approves and retains jurisdiction over the trust.
 - c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials."

Section 3. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. -- The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

(15) Interest, investment earnings, and gains of a trust, the settlors of which are two or more manufacturers that signed a settlement agreement with this State to settle existing and potential claims of the State against the manufacturers for damages attributable to a product of the manufacturers, if the trust meets all of the following conditions:

- a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.
- b. A court of this State approves and retains jurisdiction over the trust.
- c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials."

Section 4. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read as follows:

"§ 105-130.45. Credit for manufacturing cigarettes for exportation.

(a) Definitions. -- The following definitions apply in this section:

- (1) Base year exportation volume. -- The number of cigarettes manufactured and exported by a corporation during the calendar year 1998.
- (2) Exportation. -- The shipment of cigarettes manufactured in the United States to a foreign country sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes.

(b) Credit. -- A corporation engaged in the business of manufacturing cigarettes for exportation to a foreign country is allowed a credit against the taxes levied by this Part. The amount of credit allowed under this section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with the corporation's base year exportation volume, rounded to the nearest whole percentage. The amount of credit allowed is as follows:

<u>Current Year's Exportation Volume Compared to its Base Year's Exportation Volume</u>	<u>Amount of Credit per Thousand Cigarettes Exported</u>
120% or more	40c
119% - 100%	35c
99% - 80%	30c
79% - 60%	25c
59% - 50%	20c
Less than 50%	None

(c) Cap. -- The credit allowed under this section may not exceed the lesser of six million dollars (\$6,000,000) or fifty percent (50%) of the amount of tax imposed by this Part for the taxable year reduced by the sum of all other credits allowable, except tax payments made by or

on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carryforwards claimed by the taxpayer under this section for previous tax years. Any unused portion of a credit allowed in this section may be carried forward for the next succeeding five years.

(d) Documentation of Credit. -- A corporation that claims the credit under this section must include the following with its tax return:

- (1) A statement of the base year exportation volume.
- (2) A statement of the exportation volume on which the credit is based.
- (3) A list of the corporation's export volumes shown on its monthly reports to the Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury for the months in the tax year for which the credit is claimed."

Section 5. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-400.18. Sale of certain packages of cigarettes prohibited.

(a) Definitions. -- The following definitions apply in this section:

- (1) Cigarette. -- Defined in G.S. 105-113.4.
- (2) Package. -- Defined in G.S. 105-113.4.

(b) Offenses. -- A person who sells or holds for sale (other than for export to a foreign country) a package of cigarettes that meets one or more of the following descriptions commits a Class A1 misdemeanor and engages in an unfair trade practice prohibited by G.S. 75-1.1:

- (1) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331, for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.
- (2) The package is labeled 'For Export Only,' 'U.S. Tax Exempt,' 'For Use Outside U.S.,' or has similar wording indicating that the manufacturer did not intend that the product be sold in the United States.
- (3) The package was altered by adding or deleting the wording, labels, or warnings described in subdivision (1) or (2) of this subsection.
- (4) The package was imported into the United States after January 1, 2000, in violation of 26 U.S.C. § 5754.
- (5) The package violates federal trademark or copyright laws.

(c) Contraband. -- A package of cigarettes described in subsection (b) of this section is contraband and may be seized by a law enforcement officer. The procedure for seizure and disposition of this contraband is the same as the procedure under G.S. 105-113.31 and G.S. 105-113.32 for non-tax-paid cigarettes."

Section 6. Part 1 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-113.4B. Reasons why the Secretary can cancel a license.

(a) Reasons. -- The Secretary may cancel a license issued under this Article upon the written request of the license holder. The Secretary may summarily cancel the license of a license holder when the Secretary finds that the license holder is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may cancel the license of a license holder that commits one or more of the following acts after holding a hearing on whether the license should be cancelled:

- (1) A violation of this Article.
- (2) A violation of G.S. 14-400.18.

(b) Procedure. -- The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder."

Section 7. G.S. 105-113.16 is repealed.

Section 8. G.S. 105-164.29(d) reads as rewritten:

"(d) Revocation. -- Whenever a license holder fails to comply with this Article, Article or violates G.S. 14-400.18, the Secretary, upon hearing, after giving the license holder 10 days' notice in writing, specifying the time and place of hearing and requiring the license holder to show cause why the license should not be revoked, may revoke or suspend the license. The notice may be served personally or by registered mail directed to the last known address of the license holder. All provisions with respect to review and appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-241.4 apply to this section.

Any wholesale merchant or retailer who engages in business as a seller in this State without a license or after the license has been suspended or revoked, and each officer of any corporation that so engages in business shall be guilty of a Class 3 misdemeanor and only subject to a fine of up to five hundred dollars (\$500.00) for each offense."

Section 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 10. Sections 2, 3, and 4 of this act are effective for taxable years beginning on or after January 1, 1999. Sections 5 through 8 of this act become effective December 1, 1999, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. Section 4 of this act is repealed effective for cigarettes exported on or after January 1, 2005.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 3:25 p.m. on the 22nd day of July, 1999.

S.B. 10

SESSION LAW 1999-334

AN ACT TO ENACT REFORMS IN THE LONG-TERM CARE INDUSTRY IN ORDER TO IMPROVE QUALITY OF CARE, INCREASE PROTECTION OF RESIDENTS, AND STRENGTHEN REGULATORY OVERSIGHT OF INDUSTRY PRACTICES.

The General Assembly of North Carolina enacts:

PART I. SUBSTANTIVE PROVISIONS FOR RESIDENT SAFETY

Section 1.1. Article 1 of Chapter 131D of the General Statutes is amended by adding the following new sections to read:

"§ 131D-4.4. Adult care home minimum safety requirements.

In addition to other requirements established by this Article or by rules adopted pursuant to this Article or other provisions of law, every adult care home shall provide to each resident the care, safety, and services necessary to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being in accordance with:

- (1) The resident's individual assessment and plan of care; and
- (2) Rules and standards relating to quality of care and safety adopted under this Chapter.

"§ 131D-4.5. Rules adopted by Medical Care Commission.

The Medical Care Commission shall adopt rules as follows:

- (1) Establishing minimum medication administration standards for adult care homes. The rules shall include the minimum staffing and training requirements for medication aides and standards for professional supervision of adult care homes' medication controls. The requirements shall be designed to reduce the medication error rate in adult care homes to an acceptable level. The requirements shall include, but need not be limited to, all of the following:
 - a. Training for medication aides, including periodic refresher training.
 - b. Standards for management of complex medication regimens.
 - c. Oversight by licensed professionals.
 - d. Measures to ensure proper storage of medication.
- (2) Establishing training requirements for adult care home staff in behavioral interventions. The training shall include appropriate responses to behavioral problems posed by adult care residents. The training shall emphasize safety and humane care and shall specifically include alternatives to the use of restraints.

- (3) Establishing minimum training and education qualifications for supervisors in adult care homes and specifying the safety responsibilities of supervisors.
- (4) Specifying the qualifications of staff who shall be on duty in adult care homes during various portions of the day in order to assure safe and quality care for the residents. The rules shall take into account varied resident needs and population mixes.
- (5) Implementing the due process and appeal rights for discharge and transfer of residents in adult care homes afforded by G.S. 131D-21. The rules may provide for procedures comparable to those provided to nursing home residents pursuant to federal law, to Chapter 131E of the General Statutes, and to related rules.
- (6) Establishing procedures for determining the compliance history of adult care homes' principals and affiliates. The rules shall include criteria for refusing to license facilities which have a history of, or have principals or affiliates with a history of, noncompliance with State law, or disregard for the health, safety, and welfare of residents.
- (7) For the licensure of special care units in accordance with G.S. 131D-4.6, and for disclosures required to be made under G.S. 131D-7.
- (8) For time limited provisional licenses and for granting extensions for provisional licenses.

"§ 131D-4.6. Licensure of special care units.

(a) As used in this section, the term 'special care unit' means a wing or hallway within an adult care home, or a program provided by an adult care home, that is designated especially for residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition as determined by the Medical Care Commission.

(b) An adult care home that holds itself out to the public as providing a special care unit shall be licensed as such and shall, in addition to other licensing requirements for adult care homes, meet the standards established under rules adopted by the Medical Care Commission.

(c) An adult care home that holds itself out to the public as providing a special care unit without being licensed as a special care unit is subject to licensure actions and penalties provided under G.S. 131D-2(b), as well as any other action permitted by law.

"§ 131D-4.7. Adult care home specialist fund.

There is established the adult care home specialist fund. The fund shall be maintained in and by the Department for the purpose of assisting county departments of social services in paying salaries of adult care home specialists."

Section 1.2. G.S. 131D-2(a1) reads as rewritten:

"(a1) Persons not to be cared for in adult care homes. -- Except when a physician certifies that appropriate care can be provided on a

temporary basis to meet the resident's needs and prevent unnecessary relocation, adult care homes shall not care for individuals with any of the following conditions or care needs:

- (1) Ventilator dependency;
- (2) Individuals requiring continuous licensed nursing care;
- (3) Individuals whose physician certifies that placement is no longer appropriate;
- (4) Individuals whose health needs cannot be met in the specific adult care home as determined by the residence; and
- (5) Such other medical and functional care needs as the ~~Social Services~~ Medical Care Commission determines cannot be properly met in an adult care home."

Section 1.3. G.S. 131D-2(a2)(12) reads as rewritten:

"(12) Such other medical and functional care needs as the ~~Social Services~~ Medical Care Commission determines cannot be properly met in multiunit assisted housing with services."

Section 1.4. G.S. 131D-2(c2) reads as rewritten:

"(c2) The ~~Social Services~~ Medical Care Commission shall adopt ~~any~~ rules necessary to carry out this section. The Commission has the authority, in adopting rules, to specify the limitation of nursing services provided by assisted living residences. In developing rules, the Commission shall consider the need to ensure comparable quality of services provided to residents, whether these services are provided directly by a licensed assisted living provider, licensed home care agency, or hospice. In adult care homes, living arrangements where residents require supervision due to cognitive impairments, rules shall be promulgated to ensure that supervision is appropriate and adequate to meet the special needs of these residents."

Section 1.5. G.S. 131D-2(b) is amended by adding the following new subdivision to read:

"(6) Prior to issuing a new license or renewing an existing license, the Department shall conduct a compliance history review of the facility and its principals and affiliates. The Department may refuse to license a facility when the compliance history review shows a pattern of noncompliance with State law by the facility or its principals or affiliates, or otherwise demonstrates disregard for the health, safety, and welfare of residents in current or past facilities. The Department shall require compliance history information and make its determination according to rules adopted by the Medical Care Commission."

Section 1.6. G.S. 131D-21 is amended by adding the following new subdivision to read:

"(17) To not be transferred or discharged from a facility except for medical reasons, the residents' own or other residents' welfare, nonpayment for the stay, or when the transfer is mandated under State or federal law. The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the

health or safety of the resident or others in the home. The resident has the right to appeal a facility's attempt to transfer or discharge the resident pursuant to rules adopted by the Secretary, and the resident shall be allowed to remain in the facility until resolution of the appeal unless otherwise provided by law. The Secretary shall adopt rules pertaining to the transfer and discharge of residents that offer at least the same protections to residents as State and federal rules and regulations governing the transfer or discharge of residents from nursing homes."

Section 1.7. G.S. 131D-2(b)(1) reads as rewritten:

"(b) Licensure; inspections. --

- (1) The Department of Health and Human Services shall inspect and license, under rules adopted by the ~~Social Services Medical Care~~ Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the ~~Secretary of Health and Human Services~~ for failure to comply with any part of this section or any rules adopted hereunder. No new license shall be issued for any ~~domiciliary adult care~~ home whose administrator was the administrator for any ~~domiciliary adult care~~ home that had its license revoked until one full year after the date of revocation. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. A license shall not be renewed if outstanding fines and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the ~~The~~ Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:
 - a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles;
 - b. There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
 - c. There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

a. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or

b. The Department finds that:

1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or

c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the ~~Social Services Medical Care~~ Commission, for substantial failure to comply with the provisions of this section or rules ~~promulgated~~ adopted pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails written notice of the issuance of the provisional license."

Section 1.8. G.S. 131D-26 is amended by adding the following new subsection to read:

"(a1) When the department of social services in the county in which a facility is located receives a complaint alleging a violation of the provisions of this Article pertaining to patient care or patient safety, the department of social services shall initiate an investigation as follows:

- (1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.
- (2) Within 24 hours if the complaint alleges abuse of a resident as defined by G.S. 131D-20(1).
- (3) Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).
- (4) Within two weeks in all other situations.

The investigation shall be completed within 30 days. The requirements of this section are in addition to and not in lieu of any investigatory requirements for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes."

Section 1.9. G.S. 131E-124 is amended by adding two new subsections to read:

"(a1) When the Department receives a complaint alleging a violation of the provisions of this Part pertaining to patient care or patient safety, the Department shall initiate an investigation as follows:

- (1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.
- (2) Within 24 hours if the complaint alleges abuse of a resident as defined by G.S. 131D-20(1).
- (3) Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).
- (4) Within two weeks in all other situations.

The investigation shall be completed within 30 days. The requirements of this section are in addition to and not in lieu of any investigatory requirements for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes.

...
(d) Pursuant to 42 U.S.C. § 1395 and G.S. 131E-127, a nursing home as defined in G.S. 131E-101(6), is not in violation of any applicable statute, rule, or regulation for any action taken pursuant to a physician's order when the physician has determined that the action is medically necessary."

Section 1.10. G.S. 108A-103 is amended by adding the following new subsection to read:

"(d) The director shall initiate the evaluation described in subsection (a) of this section as follows:

- (1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.
- (2) Within 24 hours if the complaint alleges abuse of a resident as defined by G.S. 131D-20(1).
- (3) Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).
- (4) Within two weeks in all other situations.

The investigation shall be completed within 30 days."

Section 1.11. G.S. 131E-233 is amended by adding the following new subsection to read:

"(c) (1) Upon petition by the Department for emergency intervention, a court may order the appointment of an

emergency temporary manager after finding that there is reasonable cause to believe that:

- a. Conditions or a pattern of conditions exist in the long-term care facility that create an immediate substantial risk of death or serious physical harm to residents; or
 - b. The long-term care facility is closing or intends to close before the time in which a hearing would ordinarily be scheduled, and:
 1. Adequate arrangements for relocating residents have not been made, or
 2. Quick relocation would not be in the best interest of residents.
- (2) The court shall appoint an emergency temporary manager to serve until a hearing is conducted in accordance with ordinary procedures and shall direct the temporary manager to make only such changes in administration as necessary to protect the health or safety of residents until the emergency condition is resolved.
- (3) The court shall schedule a hearing on the appointment of an emergency temporary manager within three days after service of notice of the filing of the petition. Notice of the filing of the petition and other relevant information, including the factual basis of the belief that an emergency temporary manager is needed shall be served upon the facility as provided in this Article. The notice shall be given at least 24 hours prior to the hearing of the petition for emergency intervention, except that the court may issue an immediate emergency order ex parte upon a finding as fact that:
- a. The conditions specified above exist, and
 - b. There is likelihood that a resident may suffer irreparable injury or death if the order is delayed.
- The order shall contain a show-cause notice to each person upon whom the notice is served directing the person to appear immediately or at any time up to and including the time for the hearing of the petition for emergency services and show cause, if any exists, for the dissolution or modification of the order. Unless dissolved by the court for good cause shown, the emergency order ex parte shall be in effect until the hearing is held on the petition for emergency services. At the hearing, if the court determines that the emergency continues to exist, the court may order the provision of emergency services in accordance with subsections (a) and (b) of this section."

Section 1.12. G.S. 131E-234 reads as rewritten:

"§ 131E-234. *Grounds for appointment of temporary manager.*

Upon a showing by the Department that one or more of the following grounds exist, the court may appoint a temporary manager

for an initial period of 30 days or the first review by a superior court judge pursuant to G.S. 131E-243, whichever is longer:

- (1) Conditions or a pattern of conditions exist in the long-term care facility that create a substantial risk of death or serious physical harm to residents or that death or serious physical harm has occurred, and it is probable that the facility will not or cannot immediately remedy those conditions or pattern of conditions; conditions, or the facility has shown a pattern of failure to comply with applicable laws and rules and continues to fail to comply;
- (2) The long-term care facility is operating without a license;
- (3) The license of the long-term care facility has been revoked or the long-term care facility is closing or intends to close and: (i) adequate arrangements for relocating residents have not been made, or (ii) quick relocation would not be in the best interest of the residents; or
- (4) A previous court order has been issued requiring the respondent to act or refrain from acting in a manner directly affecting the care of the residents and the respondent has failed to comply with the court order."

Section 1.13. G.S. 131E-242(a) reads as rewritten:

"§ 131E-242. *Contingency fund.*

(a) The Department ~~shall establish~~ may maintain a temporary management contingency fund ~~fund, from the proceeds of penalties collected by the Department under the provisions of G.S. 131D-2 for adult care homes."~~

Section 1.14. G.S. 131D-2(e) reads as rewritten:

"(e) ~~The Department of Health and Human Services shall provide the method of evaluation of residents in adult care homes in order to determine when any of those residents are in need of the professional medical and nursing care provided in licensed nursing homes. The~~ Department shall ensure that facilities conduct and complete an assessment of each resident within seventy-two hours of admitting the resident and annually thereafter. In conducting the assessment, the facility shall use an assessment instrument approved by the Secretary upon the advice of the Director of the Division of Aging. The Department shall provide ongoing training for facility personnel in the use of the approved assessment instrument.

The facility shall use the assessment to develop appropriate and comprehensive service plans and care plans and to determine the level and type of facility staff that is needed to meet the needs of residents. The assessment shall determine a resident's level of functioning and shall include, but not be limited to, cognitive status and physical functioning in activities of daily living. Activities of daily living are personal functions essential for the health and well-being of the resident. The assessment shall not serve as the basis for medical care. The assessment shall indicate if the resident requires referral to the resident's physician or other appropriate licensed health care professional or community resource.

The Department as part of its inspection and licensing of adult care homes shall review assessments and related service plans and care plans for a selected number of residents. In conducting this review, the Department shall determine:

- (1) Whether the appropriate assessment instrument was administered and interpreted correctly;
- (2) Whether the facility is capable of providing the necessary services;
- (3) Whether the service plan or care plan conforms to the results of an appropriately administered and interpreted assessment; and
- (4) Whether the service plans or care plans are being implemented fully and in accordance with an appropriately administered and interpreted assessment.

If the Department finds that the facility is not carrying out its assessment responsibilities in accordance with this section, the Department shall notify the facility and require the facility to implement a corrective action plan. The Department shall also notify the resident of the results of its review of the assessment, service plans, and care plans developed for the resident. In addition to administrative penalties, the Secretary may suspend the admission of any new residents to the facility. The suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension."

Section 1.15. G.S. 131D-2(b)(1a) reads as rewritten:

- "(1a) In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection, the Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. In carrying out this requirement, the Department shall work with county departments of social services to do the routine monitoring and to have the Division of Facility Services oversee this monitoring and perform any follow-up inspection called for. The Department shall monitor regularly the enforcement of rules pertaining to air circulation, ventilation, and room temperature in resident living quarters. These rules shall include the requirement that air conditioning or at least one fan per resident bedroom and living and dining areas be provided when the temperature in the main center corridor exceeds 80 degrees Fahrenheit. The Department shall also keep an up-to-date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section."

PART II. ADULT CARE HOME DISCLOSURE REQUIREMENTS

Section 2.1. Article 1 of Chapter 131D of the General Statutes is amended by adding the following new section to read:

"§ 131D-7. Adult care home special care units; disclosure of information required.

(a) An adult care home licensed under this Part that provides care for persons in special care units as defined in G.S. 131D-4.6 shall disclose the form of care or treatment provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition. The disclosure shall be in writing and shall be made to all of the following:

- (1) The Department as part of its licensing procedures.
- (2) Each person seeking placement within a special care unit, or the person's authorized representative, prior to entering into an agreement with the person to provide special care.
- (3) The Office of State Long-Term Care Ombudsman, annually, or more often if requested.

(b) Information that must be disclosed in writing shall include, but is not limited to, all of the following:

- (1) A statement of the overall philosophy and mission of the licensed facility and how it reflects the special needs of residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition.
- (2) The process and criteria for placement, transfer, or discharge to or from the special care unit.
- (3) The process used for assessment and establishment of the plan of care and its implementation, including how the plan of care is responsive to changes in the resident's condition.
- (4) Staffing ratios and how they meet the resident's need for increased care and supervision.
- (5) Staff training that is dementia-specific.
- (6) Physical environment and design features that specifically address the needs of residents with Alzheimer's disease or other dementias.
- (7) Frequency and type of programs and activities for residents of the special care unit.
- (8) Involvement of families in resident care, and availability of family support programs.
- (9) Additional costs and fees to the resident for special care.

(c) As part of its license renewal procedures and inspections, the Department shall examine for accuracy the written disclosure of each adult care home subject to this section. Substantial changes to written disclosures shall be reported to the Department at the time the change is made.

(d) Nothing in this section shall be construed as prohibiting an adult care home that does not offer a special care unit from admitting a person with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition. The disclosures required under this section apply only to an adult care home that

advertises, markets, or otherwise promotes itself as providing a special care unit for persons with Alzheimer's disease or other dementias.

(e) As used in this section, the term 'special care unit' has the same meaning as applies under G.S. 131D-4.6."

Section 2.2. G.S. 131D-6 is amended by adding the following new subsection to read:

"(b1) An adult day care program that provides or that advertises, markets, or otherwise promotes itself as providing special care services for persons with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition shall provide the following written disclosures to the Department and to persons seeking adult day care program special care services:

- (1) A statement of the overall philosophy and mission of the adult day care program and how it reflects the special needs of participants with dementia.
- (2) The process and criteria for providing or discontinuing special care services.
- (3) The process used for assessment and establishment of the plan of care and its implementation, including how the plan of care is responsive to changes in the participant's condition.
- (4) Staffing ratios and how they meet the participant's need for increased special care and supervision.
- (5) Staff training that is dementia-specific.
- (6) Physical environment and design features that specifically address the needs of participants with Alzheimer's disease or other dementias.
- (7) Frequency and type of participant activities provided.
- (8) Involvement of families in special care and availability of family support programs.
- (9) Additional costs and fees to the participant for special care.

(c) As part of its certification renewal procedures and inspections, the Department shall examine for accuracy the written disclosure of each adult day care program subject to this section. Substantial changes to written disclosures shall be reported to the Department at the time the change is made.

(d) Nothing in this section shall be construed as prohibiting an adult day care program that does not advertise, market, or otherwise promote itself as providing special care services for persons with Alzheimer's disease or other dementias from providing adult day care services to persons with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition.

(e) As used in this section, the term 'special care service' means a program, service, or activity designed especially for participants with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition as determined by the Medical Care Commission."

PART III. MISCELLANEOUS AND CONFORMING PROVISIONS

Section 3.1. Effective July 1, 1999, G.S. 131D-4.2(c) is repealed.

Section 3.2. G.S. 131D-4.2(h) reads as rewritten:

"(h) The report documentation shall be used to adjust the adult care home rate annually, an adjustment that is in addition to the annual standard adjustment for inflation as determined by the Office of State Budget and Management. Rates for family care homes shall be based on market rate data. The Department Secretary of Health and Human Services shall adopt rules for the rate-setting methodology and audited cost reports in accordance with G.S. 143B-10."

Section 3.3. G.S. 131D-2(a) is amended by adding the following new subdivision to read:

"(1f) 'Department' means the Department of Health and Human Services unless some other meaning is clearly indicated from the context."

Section 3.4. G.S. 131D-2(a) is amended by adding the following new subdivision to read:

"(12) 'Secretary' means the Secretary of Health and Human Services unless some other meaning is clearly indicated from the context."

Section 3.5. Effective October 1, 1999, G.S. 143B-153(3) reads as rewritten:

"(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

- a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;
- b. ~~For the inspection and licensing of adult care homes for aged or disabled persons as provided by G.S. 131D-2(b) and for personnel requirements of staff employed in adult care homes;~~
- c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;
- d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;
- e. Repealed by Session Laws 1981, c. 562, s. 7.
- f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina."

Section 3.6. G.S. 143B-165(10) reads as rewritten:

"(10) The Commission shall have the power and duty to ~~promulgate adopt rules and regulations~~ for the operation of nursing homes, as defined by ~~G.S. 130-9(e)~~, Article 6 of Chapter 131E of the General Statutes."

Section 3.7. Effective October 1, 1999, G.S. 143B-165 is amended by adding the following new subdivision to read:

"(13) The Commission shall have the power and duty to adopt rules for the inspection and licensure of adult care homes and operation of adult care homes, as defined by Article 1 of Chapter 131D of the General Statutes, and for personnel requirements of staff employed in adult care homes, except where rule-making authority is assigned to the Secretary."

Section 3.8. The Department of Health and Human Services shall establish and maintain a provider file to record and monitor compliance histories of facilities, owners, operators, and affiliates of nursing homes and adult care homes.

Section 3.9. The Department of Health and Human Services shall continue its demonstration project testing whether the TEACCH model is a viable method for finding and retaining competent staff for adult care homes and nursing homes.

Section 3.10. The Secretary of Health and Human Services shall adopt temporary rules in accordance with Chapter 150B of the General Statutes to implement G.S. 131D-4.5 as enacted by this act. The Secretary shall adopt temporary rules within 60 days of the date this act becomes law. The Secretary's authority to adopt temporary rules to implement G.S. 131D-4.5 as enacted by this act expires on the date that permanent rules adopted by the Medical Care Commission to implement G.S. 131D-4.5 as enacted by this act become effective.

Section 3.11. Part 14E of Article 3 of Chapter 143B of the General Statutes is repealed.

Section 3.12. The Department of Health and Human Services shall recommend to the North Carolina Study Commission on Aging a more efficient system of regulatory administration for adult care homes that delineates clear authority and streamlines government functions. The Department shall report its recommendations to the North Carolina Study Commission on Aging on or before February 1, 2000. The North Carolina Study Commission on Aging shall review the Department's recommendations and shall make recommendations to the General Assembly on or before May 1, 2000.

Section 3.13. The North Carolina Study Commission on Aging shall study the following:

- (1) Establishment of a licensing fee as a source of revenue for monitoring, staffing, and temporary management of adult care homes.
- (2) The need for licensure of adult care home administrators, separate from the licensure of adult care facilities.
- (3) The lack of uniformity, accountability, and central authority in the current regulatory system and how this impacts on care delivery and quality of life for adult care home residents.
- (4) How to address problems that arise when adult care homes admit persons whose behavior poses a threat to the safety and well-being of other residents.

The Commission shall report its findings and recommendations to the General Assembly on or before May 1, 2000.

Section 3.13A. The Mental Health Study Commission shall study issues related to the appropriate placement of persons with mental health disabilities in adult care homes. In conducting the study, the Commission shall consider whether adequate mental health services are available to residents in adult care homes. The Commission shall report its findings and recommendations to the 1999 General Assembly, Regular Session 2000, not later than May 1, 2000.

Section 3.14. The Joint Legislative Health Care Oversight Committee shall study whether the Health Care Personnel Registry is working effectively and shall recommend any changes needed to improve its effectiveness. In conducting its study, the Committee shall consider the following:

- (1) The extent to which employers of health care personnel subject to listing in the Registry are complying with statutory requirements to report incidents to the Registry.
- (2) The extent to which employers of health care personnel subject to listing in the Registry are contacting the Registry before making hiring decisions to ascertain if applicants are listed in the Registry.
- (3) Whether the scope of the Registry should be expanded to cover other types of health care personnel or health care facilities.
- (4) Other issues relating to the Health Care Personnel Registry and its purpose.

The Committee shall also study the requirements for criminal history record checks for applicants for employment in adult care homes. In conducting this study, the Committee shall determine if the requirements should be strengthened or otherwise amended to expand the scope or procedure for the check or to make the information revealed by the check more quickly available to employers.

The Health Care Oversight Committee shall report its findings and recommendations to the General Assembly on or before May 1, 2000.

Section 3.15. G.S. 14-32.2 reads as rewritten:

"§ 14-32.2. *Patient abuse and neglect; punishments.*

(a) It shall be unlawful for any person to physically abuse a patient of a health care facility or a resident of a residential care facility, ~~when the abuse is the result of an intentional or culpable negligent act or omission which causes serious bodily injury or death.~~ results in death or bodily injury.

(b) Unless the conduct is prohibited by some other provision of law providing for greater punishment,

- (1) ~~Any person who violates~~ A violation of subsection (a) above is guilty of a Class C felony where intentional conduct proximately causes the death of the patient or resident;

- (2) ~~Any person who violates~~ A violation of subsection (a) above is guilty of a Class E felony where culpably negligent conduct proximately causes the death of the patient or resident;
- (3) ~~Any person who violates~~ A violation of subsection (a) above is guilty of a Class F felony where such conduct is willful or culpably negligent and proximately causes serious bodily injury to the patient or resident.
- (4) A violation of subsection (a) is a Class A1 misdemeanor where such conduct evinces a pattern of conduct and the conduct is willful or culpably negligent and proximately causes bodily injury to a patient or resident.

(c) 'Health Care Facility' shall include hospitals, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, psychiatric facilities, rehabilitation facilities, kidney disease treatment centers, home health agencies, ambulatory surgical facilities, and any other health care related facility whether publicly or privately owned.

(c1) 'Residential Care Facility' shall include adult care homes and any other residential care related facility whether publicly or privately owned.

(d) 'Person' shall include any natural person, association, corporation, partnership, or other individual or entity.

(e) 'Culpably negligent' shall mean conduct of a willful, gross and flagrant character, evincing reckless disregard of human life.

(e1) 'Abuse' means the willful or culpably negligent infliction of physical injury or the willful or culpably negligent violation of any law designed for the health, welfare, or comfort of a patient or resident.

(f) Any defense which may arise under G.S. 90-321(h) or G.S. 90-322(d) pursuant to compliance with Article 23 of Chapter 90 shall be fully applicable to any prosecution initiated under this section.

(g) Criminal process for a violation of this section may be issued only upon the request of a District Attorney.

(h) The provisions of this section shall not supersede any other applicable statutory or common law offenses."

Section 3.16. Section 3.15 of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law upon approval of the Governor at 5:45 p.m. on the 22nd day of July, 1999.

S.B. 420

SESSION LAW 1999-335

AN ACT TO CLARIFY THE DEALERS AND MANUFACTURERS
LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-301 is amended by adding a new subsection that reads:

"(f) In the event that a dealer, who is permitted or required to file a notice, protest, or petition before the Commissioner within a certain period of time in order to adjudicate, enforce, or protect rights afforded the dealer under this Article, voluntarily elects to appeal a policy, determination, or decision of the manufacturer through an appeals board or internal grievance procedure of the manufacturer, or to participate in or refer the matter to mediation, arbitration, or other alternative dispute resolution procedure or process established or endorsed by the manufacturer, the applicable period of time for the dealer to file the notice, protest, or petition before the Commissioner under this Article shall not commence until the manufacturer's appeal board or internal grievance procedure, mediation, arbitration, or appeals process of the manufacturer has been completed and the dealer has received notice in writing of the final decision or result of the procedure or process. Nothing, however, contained in this subsection shall be deemed to require that any dealer exhaust any internal grievance or other alternative dispute process required or established by the manufacturer before seeking redress from the Commissioner as provided in this Article."

Section 2. G.S. 20-305 reads as rewritten:

"§ 20-305. Coercing dealer to accept commodities not ordered; threatening to cancel franchise; preventing transfer of ownership; granting additional franchises; terminating franchises without good cause; preventing family succession.

It shall be unlawful for any manufacturer, factory branch, distributor, or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:

- (1) To require, coerce, or attempt to coerce any dealer to accept delivery of any motor vehicle or vehicles, parts or accessories therefor, or any other commodities, which shall not have been ordered by ~~such dealer~~; that dealer, or to accept delivery of any motor vehicle or vehicles which have been equipped in a manner other than as specified by the dealer.
- (2) To require, coerce, or attempt to coerce any dealer to enter into any agreement with such manufacturer, factory branch, distributor, or distributor branch, or representative thereof, or do any other act unfair to such dealer, by threatening to cancel any franchise existing between such manufacturer, factory branch, distributor, distributor branch, or representative thereof, and such dealer;
- (3) Unfairly without due regard to the equities of the dealer, and without just provocation, to cancel the franchise of such dealer;
- (4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock

transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor the transfer, sale, assignment, relocation, or change is unreasonable under the circumstances. No franchise may be transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless the franchisor has been given at least 30 days' prior written notice as to the identity, financial ability, and qualifications of the proposed transferee, the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. ~~The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances.~~ With respect to a proposed transfer of ownership, sale, or assignment, the sole issue for determination by the Commissioner and the sole issue upon which the Commissioner shall hear or consider evidence is whether, by reason of lack of good moral character, lack of general business experience, or lack of financial ability, the proposed transferee is unfit to own the dealership. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed transferee who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied business experience and financial requirements, if any, required by the manufacturer of owners of its franchised automobile dealerships is presumed to demonstrate the manufacturer's failure to prove that the proposed transferee is unfit to own the dealership. With respect to a proposed change in the executive management or principal operator of the dealership, the sole issue for determination by the Commissioner and the sole issue on which the Commissioner shall hear or consider evidence shall be

whether, by reason of lack of training, lack of prior experience, poor past performance, or poor character, the proposed candidate for a position within the executive management or as principal operator of the dealership is unfit for the position. For purposes of this subdivision, the refusal by the manufacturer to accept a proposed candidate for executive management or as principal operator who is of good moral character and who otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the manufacturer relating to the business experience and prior performance of executive management required by the manufacturers of its dealers is presumed to demonstrate the manufacturer's failure to prove the proposed candidate for executive management or as principal operator is unfit to serve the capacity. With respect to a proposed relocation or other proposed change, the issue for determination by the Commissioner is whether the proposed relocation or other change is unreasonable under the circumstances. For purposes of this subdivision, the refusal by the manufacturer to agree to a proposed relocation which meets the written, reasonable, and uniformly applied standards or criteria, if any, of the manufacturer relating to dealer relocations is presumed to demonstrate that the manufacturer's failure to prove the proposed relocation is unreasonable under the circumstances. The manufacturer shall have the burden of proof before the Commissioner under this subdivision. It is unlawful for a manufacturer to, in any way, condition its approval of a proposed transfer, sale, assignment, change in the dealer's executive management or principal operator on the existing or proposed dealer's willingness to construct a new facility, renovate the existing facility, acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space. It is unlawful for a manufacturer to, in any way, condition its approval of a proposed relocation on the existing or proposed dealer's willingness to acquire or refrain from acquiring one or more line-makes of vehicles, separate or divest one or more line-makes of vehicle, or establish or maintain exclusive facilities, personnel, or display space.

- (5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in that line make in the relevant market area of the intention to establish an additional dealer or to relocate an

existing dealer within or into that market area. Within 30 days of receiving such notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a ~~hearing, nor thereafter, if the Commissioner~~ hearing and has determined that there is good cause for ~~not~~ permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor ~~vehicle;~~ vehicle. If this sub-subdivision is applicable, only dealers trading in the same line-make of vehicle that are located within the 10-mile radius shall be entitled to notice from the manufacturer and have the protest rights afforded under this section; or
 2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
 3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle ~~dealership;~~ dealership if the franchise has been operating on a regular basis from the existing site for a minimum of three years immediately preceding the relocation; or
 4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.
- b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;

2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
 3. Effect on the consuming public in the relevant market area;
 4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
 5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
 6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and
 7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.
- c. The Commissioner shall try to conduct the hearing and render his final determination if possible, within 180 days after a protest is filed.
 - d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
 - e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.
 - f. If the Commissioner determines, following a hearing, that good cause ~~does not exist for refusing to permit~~ exists for permitting the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring

renotification, a new hearing, and a new determination as provided in this section. If the Commissioner fails to determine that good cause exists for permitting the proposed additional or relocated motor vehicle dealership, the manufacturer seeking the proposed additional dealership or dealer seeking to relocate may not again provide notice of its intention or otherwise attempt to establish an additional dealership or relocate to any location within 10 miles of the site of the original proposed additional dealership or relocation site for a minimum of three years from the date of the Commissioner's determination.

- g. (See editor's note for applicability) For purposes of this subdivision, the addition, creation, or operation of a "satellite" or other facility, not physically part of or contiguous to an existing licensed new motor vehicle dealer, whether or not owned or operated by a person or other entity holding a franchise as defined by G.S. 20-286(8a), at which warranty service work authorized or reimbursed by a manufacturer is performed or at which new motor vehicles are offered for sale to the public, shall be considered an additional new motor vehicle dealer requiring a showing of good cause, prior notification to existing new motor vehicle dealers of the same line make of vehicle within the relevant market area by the manufacturer and the opportunity for a hearing before the Commissioner as provided in this subdivision.
- (6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements of subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within the time period specified in G.S. 20-305(6)cIII, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner shall try to conduct the hearing and render a final determination within

180 days after a petition has been filed. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall try to render his final determination no later than 90 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes. Any determination of the Commissioner under this section finding that good cause exists for the nonrenewal, cancellation, or termination of any franchise shall automatically be stayed during any period that the affected dealer shall have the right to judicial review or appeal of the determination before the superior court or any other appellate court and during the pendency of any appeal; provided, however, that within 30 days of entry of the Commissioner's order, the affected dealer provide such security as the reviewing court, in its discretion, may deem appropriate for payment of such costs and damages as may be incurred or sustained by the manufacturer by reason of and during the pendency of the stay. Although the right of the affected dealer to such stay is automatic, the procedure for providing such security and for the award of damages, if any, to the manufacturer upon dissolution of the stay shall be in accordance with G.S. 1A-1, Rule 65(d) and (e). No such security provided by or on behalf of any affected dealer shall be forfeited or damages awarded against a dealer who obtains a stay under this subdivision in the event the ownership of the affected dealership is subsequently transferred, sold, or assigned to a third party in accordance with this subdivision or subdivision (4) of this section and the closing on such transfer, sale, or assignment occurs no later than 180 days after the date of entry of the Commissioner's order. Furthermore, unless and until the termination, cancellation, or nonrenewal of a dealer's franchise shall finally become effective, in light of any stay or any order of the Commissioner determining that good cause exists for the termination, cancellation, or nonrenewal of a dealer's franchise as provided in this paragraph, a dealer who receives a notice of termination, cancellation, or nonrenewal from a manufacturer as provided in this subdivision shall continue to have the same rights to assign, sell, or transfer the franchise to a third party under the franchise and as permitted under G.S. 20-305(4) as if notice of the termination had not been given by the manufacturer. Any franchise under notice or threat of termination, cancellation, or nonrenewal by the manufacturer which is duly transferred in accordance with

G.S. 20-305(4) shall not be subject to termination by reason of failure of performance or breaches of the franchise on the part of the transferor.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:

1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;

2. If the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of the failure; and

I. The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal. --

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

- II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or
 - III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:
 - A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;
 - B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;
 - C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;
 - D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.
 - IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.
 - V. Unless the failure by the new motor vehicle dealer relates to the performance of the new motor vehicle dealer in sales or service, not more than one year after the manufacturer first acquired knowledge of the basic facts comprising the failure.
- 2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:
 - I. A statement of intention to terminate, cancel or not to renew the franchise;
 - II. A detailed statement of all of the material reasons for the termination, cancellation or nonrenewal; and
 - III. The date on which the termination, cancellation or nonrenewal takes effect.
 - 3. Notification provided in G.S. 20-305(6)cIII of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided

the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. --

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

- I. New motor vehicle inventory that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200 miles, and for which no certificate of title has been issued;

- II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

- III. ~~Equipment~~ Equipment, signs, and furnishings that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

- IV. Special tools that have not been altered or damaged and that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession of the same to the manufacturer. The manufacturer shall be obligated to pay or reimburse the dealer for any transportation charges associated with the manufacturer's repurchase

obligations under this sub-subparagraph. The manufacturer may not charge the dealer any handling, restocking, or other similar costs or fees associated with items repurchased by the manufacturer under this sub-subparagraph.

- e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or ~~one~~ three year's rent, whichever is less, or such longer term as is provided in the franchise agreement between the dealer and manufacturer; except that, in the case of motorcycle dealerships, the manufacturer shall pay the new motor vehicle dealer the sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or such longer term as provided in the franchise agreement between the dealer and manufacturer; or
2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for ~~one year,~~ three years, or for one year in the case of motorcycle dealerships.
3. ~~Provided nothing in this paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.~~

In order to be entitled to facilities assistance from the manufacturer, as provided in this paragraph e., the dealer, owner, or lessee, as the case may be, shall have the obligation to mitigate damages by

listing the demised premises for lease or sublease with a licensed real estate agent within 30 days after the effective date of the termination of the franchise and thereafter by reasonably cooperating with said real estate agent in the performance of the agent's duties and responsibilities. In the event that the dealer, owner, or lessee is able to lease or sublease the demised premises, the dealer shall be obligated to pay the manufacturer the net revenue received from such mitigation up to the total amount of facilities assistance which the dealer has received from the manufacturer pursuant to sub-subdivisions 1. and 2. To the extent and for such uses and purposes as may be consistent with the terms of the lease, a manufacturer who pays facilities assistance to a dealer under this paragraph e. shall be entitled to occupy and use the dealership facilities during the years for which the manufacturer shall have paid rent under sub-subdivisions 1. and 2.

4. In the event the termination relates to fewer than all of the franchises operated by the dealer at a single location, the amount of facilities assistance which the manufacturer is required to pay the dealer under this sub-subdivision shall be based on the proportion of gross revenue received from the sale and lease of new vehicles by the dealer and from the dealer's parts and service operations during the three years immediately preceding the effective date of the termination (or any shorter period that the dealer may have held these franchises) of the line-makes being terminated, in relation to the gross revenue received from the sale and lease of all line-makes of new vehicles by the dealer and from the total of the dealer's and parts and service operations from this location during the same three-year period.
5. The compensation required for facilities assistance under this paragraph e. shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation, or nonrenewal.
- f. The provisions of ~~paragraphs~~ sub-subdivisions d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer.

Notwithstanding the terms of any contract or agreement, any dealer's termination or resignation shall not be deemed to be voluntary if that termination or resignation occurred under the manufacturer's threat of

nonrenewal, cancellation, or termination of the franchise.

- (7) Notwithstanding the terms of any contract or agreement, to prevent or refuse to honor the succession to a dealership, including the franchise, by a motor vehicle dealer's designated successor as provided for under this subsection.
- a. Any owner of a new motor vehicle dealership may appoint by will, or any other written instrument, a designated successor to succeed in the respective ownership interest or interest as principal operator of the ~~said~~ owner in the new motor vehicle dealership, including the franchise, upon the death or incapacity of the ~~owner~~ owner or principal operator. In order for succession to the position of principal operator to occur by operation of law in accordance with sub-subdivision c. below, the owner's choice of a successor must be approved by the dealer, in accordance with the dealer's bylaws, if applicable, either prior or subsequent to the death or incapacity of the existing principal operator.
 - b. Any objections by a manufacturer or distributor to an owner's appointment of a designated successor shall be asserted in accordance with the following procedure:
 1. Within 30 days after receiving written notice of the identity of the owner's designated successor and general information as to the financial ability and qualifications of the designated successor, the franchisor shall send the owner and designated successor notice of objection, by registered or certified mail, return receipt requested, to the appointment of the designated successor. The notice of objection shall state in detail all facts which constitute the basis for the contention on the part of the manufacturer or distributor that good cause, as defined in this sub-subdivision below, exists for rejection of the designated successor. Failure by the franchisor to send notice of objection within 30 days and otherwise as provided in this sub-subdivision shall constitute waiver by the franchisor of any right to object to the appointment of the designated successor.
 2. Any time within 30 days of receipt of the manufacturer's notice of objection the owner or the designated successor may file a request in writing with the Commissioner that the Commissioner hold an evidentiary hearing and determine whether good cause exists for rejection of the designated successor. When such a request is filed, the Commissioner shall promptly inform the affected

- manufacturer or distributor that a timely request has been filed.
3. The Commissioner shall endeavor to hold the evidentiary hearing required under this sub-subdivision and render a determination within 180 days after receipt of the written request from the owner or designated successor. In determining whether good cause exists for rejection of the owner's appointed designated successor, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the franchisor's existing written and reasonable standards and, considering the volume of sales and service of the new motor vehicle dealer, uniformly applied minimum business experience standards in the market area.
 4. Any parties to a hearing by the Commissioner concerning whether good cause exists for the rejection of the dealer's designated successor shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.
 5. Nothing in this sub-subdivision shall preclude a manufacturer or distributor from, upon its receipt of written notice from ~~a dealer~~ an owner of the identity of the ~~dealer's~~ owner's designated successor, requiring that the designated successor promptly provide personal and financial data that is reasonably necessary to determine the financial ability and qualifications of the designated successor; provided, however, that such a request for additional information shall not delay any of the time periods or constraints contained herein.
 6. In the event death or incapacity of the owner or principal operator occurs prior to the time a manufacturer or distributor receives notice of the owner's appointment of a designated successor or before the Commissioner has rendered a determination as provided above, the existing franchise shall remain in effect and the designated successor shall be deemed to have succeeded to all of the owner's or principal operator's rights and obligations in the dealership and under the franchise until a determination is made by the Commissioner or the rights of the parties have otherwise become fixed in accordance with this sub-subdivision.
- c. Except as otherwise provided in sub-subdivision d. of this subdivision, any designated successor of a deceased

or incapacitated owner or principal operator of a new motor vehicle dealership appointed by such owner in substantial compliance with this section shall, by operation of law, succeed at the time of such death or incapacity to all of the ~~ownership~~ rights and obligations of the owner or principal operator in the new motor vehicle dealership and under the existing franchise.

- d. Within 60 days after the death or incapacity of the ~~owner,~~ owner or principal operator, a designated successor appointed in substantial compliance with this section shall give the affected manufacturer or distributor written notice of his or her succession to the ~~ownership~~ position of owner or principal operator of the new motor vehicle dealership; provided, however, that the failure of the designated successor to give the manufacturer or distributor written notice as provided above within 60 days of the ~~owner's~~ death or incapacity of the owner or principal operator shall not result in the waiver or termination of the designated successor's right to succeed to the ownership of the new motor vehicle dealership unless the manufacturer or distributor gives written notice of this provision to either the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary by certified or registered mail, return receipt requested, and said written notice grants not less than 30 days time within which the designated successor may give the notice required hereunder, provided the designated successor or the deceased or incapacitated owner's executor, administrator, guardian or other fiduciary has given the manufacturer reasonable notice of death or incapacity. Within 30 days of receipt of the notice by the manufacturer or distributor from the designated successor provided in this paragraph, the manufacturer or distributor may request that the designated successor complete the application forms generally utilized by the manufacturer or distributor to review the designated successor's qualifications to establish a successor dealership. Within 30 days of receipt of the completed forms, the manufacturer or distributor shall send a letter by certified or registered mail, return receipt requested, advising the designated successor of facts and circumstances which have changed since the manufacturer's or distributor's original approval of the designated successor, and which have caused the manufacturer or distributor to object to the designated successor. Upon receipt of such notice, the designated successor may either designate an alternative successor

- or may file a request for evidentiary hearing in accordance with the procedures provided in subdivisions b. 2.-5. of this subdivision. In any such hearing, the manufacturer or distributor shall be limited to facts and circumstances which did not exist at the time the designated successor was originally approved or evidence which was originally requested to be produced by the designated successor at the time of the original request and was ~~either not produced or the material which was produced was incorrect, fraudulent.~~
- e. The designated successor shall agree to be bound by all terms and conditions of the franchise in effect between the manufacturer or distributor and the owner at the time of the owner's or principal operator's death or incapacity, if so requested in writing by the manufacturer or distributor subsequent to the owner's or principal operator's death or incapacity.
- f. This section does not preclude an owner of a new motor vehicle dealership from designating any person as his or her successor by written instrument filed with the manufacturer or distributor, and, in the event there is an inconsistency between the successor named in such written instrument and the designated successor otherwise appointed by the owner consistent with the provisions of this section, and that written instrument has not been revoked by the owner of the new motor vehicle dealership in writing to the manufacturer or distributor, then the written instrument filed with the manufacturer or distributor shall govern as to the appointment of the successor.
- (8) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of ~~such~~ those motor vehicles as publicly advertised by the manufacturer or distributor.
- (9) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to purchase nondiagnostic computer equipment or programs, to participate monetarily in an advertising campaign or contest, or to purchase unnecessary or unreasonable quantities of any promotional materials, training materials, training programs, showroom or other display decorations or materials decorations, materials, computer equipment or programs, or special tools at the expense of the new motor vehicle dealer, provided that nothing in this subsection shall preclude a manufacturer or distributor from including an unitemized uniform charge in the base price of the new motor vehicle charged to the dealer where such charge is attributable to

advertising costs incurred or to be incurred by the manufacturer or distributor in the ordinary courses of its business.

- (10) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change the capital structure of the new motor vehicle dealer or the means by or through which the new motor vehicle dealer finances the operation of the dealership provided that the new motor vehicle dealer at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria; and also provided that no change in the capital structure shall cause a change in the principal management or have the effect of a sale of the franchise without the consent of the manufacturer or distributor, provided that said consent shall not be unreasonably withheld.
- (11) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products; Provided, however, that this subsection does not apply unless the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, and the new motor vehicle dealer remains in compliance with any reasonable capital standards and facilities requirements of the manufacturer. The reasonable facilities requirements shall not include any requirement that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display ~~space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations.~~ space.
- (12) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to change location of the dealership, or to make any substantial alterations to the dealership premises or facilities, when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles so as to justify such an expansion, in light of the current market and economic conditions.
- (13) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability to be imposed by this law or to require any controversy between a new motor vehicle dealer and a manufacturer, distributor, or representative, to be referred to any person other than the duly constituted courts of the State or the United States of

America, or to the Commissioner, if such referral would be binding upon the new motor vehicle dealer.

- (14) To delay, refuse, or fail to deliver motor vehicles or motor vehicle parts or accessories in reasonable quantities relative to the new motor vehicle dealer's facilities and sales potential in the new motor vehicle dealer's ~~relevant market area, and area~~ as determined in accordance with reasonably applied economic principles, or within a reasonable time, after receipt of an order from a dealer having a franchise for the retail sale of any new motor vehicle sold or distributed by the manufacturer or distributor, any new vehicle, parts or accessories to new vehicles as are covered by such franchise, and such vehicles, parts or accessories as are publicly advertised as being available or actually being delivered. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a motor vehicle dealer who has not received delivery thereof, but who has placed his written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle to a motor vehicle dealer within a reasonable time, without cause. Except as may be required by any consent decree of the Commissioner or other order of the Commissioner or court of competent jurisdiction, each manufacturer shall allocate its products in a manner that provides each of its franchised dealers in this State an adequate supply of vehicles by series, product line, and model to achieve the manufacturer's minimum sales requirements, planning volume, or sales objectives and that is fair and equitable to all of its franchised dealers in this State. Additionally, each manufacturer shall make available to each of its franchised dealers in this State a minimum of one of each vehicle series, model, or product line that the manufacturer advertises nationally as being available for purchase. A manufacturer shall not unfairly discriminate among its franchised dealers in this allocation process. This subsection is not violated, however, if such failure is caused by acts or causes beyond the control of the manufacturer, distributor, factory branch, or factory representative.
- (15) To refuse to disclose to any new motor vehicle dealer, handling the same line make, the manner and mode of distribution of that line make within the State.
- (16) To award money, goods, services, or any other benefit to any new motor vehicle dealership employee, either directly or indirectly, unless such benefit is promptly accounted for, and transmitted to, or approved by, the new motor vehicle dealer.

- (17) To increase prices of new motor vehicles which the new motor vehicle dealer had ordered and which the manufacturer or distributor has accepted for immediate delivery for private retail consumers prior to the new motor vehicle dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer shall constitute evidence of each such order provided that the vehicle is in fact delivered to that customer. Price differences applicable to new model or series shall not be considered a price increase or price decrease. Price changes caused by either: (i) the addition to a new motor vehicle of required or optional equipment; or (ii) revaluation of the United States dollar, in the case of foreign-make vehicles or components; or (iii) an increase in transportation charges due to increased rates imposed by carriers; or (iv) new tariffs or duties imposed by the United States of America or any other governmental authority, shall not be subject to the provisions of this subsection.
- (18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) above.
- (19) To offer any refunds or other types of inducements to any person for the purchase of new motor vehicles of a certain line make to be sold to the State or any political subdivision thereof without making the same offer available upon request to all other new motor vehicle dealers in the same line make within the State.
- (20) To release to any outside party, except under subpoena or as otherwise required by law or in an administrative, judicial or arbitration proceeding involving the manufacturer or new motor vehicle dealer, any confidential business, financial, or personal information which may be from time to time provided by the new motor vehicle dealer to the manufacturer, without the express written consent of the new motor vehicle dealer.
- (21) To deny any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose.
- (22) To unfairly discriminate among its new motor vehicle dealers with respect to warranty reimbursements or authority granted its new motor vehicle dealers to make warranty adjustments with retail customers.
- (23) To engage in any predatory practice against or unfairly compete with a new motor vehicle dealer located in this State.
- (24) To terminate any franchise solely because of the death or incapacity of an owner who is not listed in the franchise as

one on whose expertise and abilities the manufacturer relied in the granting of the franchise.

- (25) To require, coerce, or attempt to coerce a new motor vehicle dealer in this State to either establish or maintain exclusive facilities, personnel, or display ~~space, when such requirements, or any of them, would be unreasonable in light of current economic conditions and would not otherwise be justified by reasonable business considerations, space.~~
- (26) To resort to or to use any false or misleading advertisement in the conducting of its business as a manufacturer or distributor in this State.
- (27) To knowingly make, either directly or through any agent or employee, any material statement which is false or misleading and or conceal any material facts which ~~induces~~ induce any new motor vehicle dealer to enter into any agreement or franchise or to take any action which is materially prejudicial to that new motor vehicle dealer or his business.
- (28) To require, coerce, or attempt to coerce any new motor vehicle dealer to purchase or order any new motor vehicle as a precondition to purchasing, ordering, or receiving any other new motor vehicle or vehicles. Nothing herein shall prevent a manufacturer from requiring that a new motor vehicle dealer fairly represent and inventory the full line of new motor vehicles which are covered by the franchise agreement.
- (29) To require, coerce, or attempt to coerce any new motor vehicle dealer to sell, transfer, or otherwise issue stock or other ownership interest in the dealership corporation to a general manager or any other person involved in the management of the dealership other than the dealer principal or dealer operator named in the franchise, unless the dealer principal or dealer operator is an absentee owner who is not involved in the operation of the dealership on a regular basis.
- (30) To vary the price charged to any of its franchised new motor vehicle dealers located in this State for new motor vehicles based on the dealer's purchase of new facilities, supplies, tools, equipment, or other merchandise from the manufacturer, the dealer's relocation, remodeling, repair, or renovation of existing dealerships or construction of a new facility or upon the dealer's participation in training programs sponsored, endorsed, or recommended by the manufacturer.

The price of the vehicle, for purposes of this subdivision shall include the manufacturer's use of rebates, credits, or other consideration which has the effect of causing a

variance in the price of new motor vehicles offered to its franchised dealers located in the State.

Notwithstanding the foregoing, nothing in this subdivision shall be deemed to preclude a manufacturer from establishing sales contests or promotions which provide or award dealers or consumers rebates or incentives.

Nothing contained in this subdivision shall prohibit a manufacturer from providing assistance or encouragement to a franchised dealer to remodel, renovate, recondition, or relocate the dealer's existing facilities, provided that this assistance, encouragement, or rewards are not determined on a per vehicle basis.

In the event that at the time of the ratification of this act a manufacturer is currently operating a program or has in effect a policy which would violate this subdivision after the effective date of this act, it shall be lawful for that program or ~~policy~~ policy, or a program or policy similar thereto implemented after the effective date of this act, to continue in effect as to the manufacturer's franchised dealers located in this State until ~~December 31, 1999.~~ December 31, 2002. Any manufacturer shall be required to pay or otherwise compensate any franchise dealer who has earned the right to receive payment or other compensation under a program ~~as of December 31, 1999,~~ in accordance with the manufacturer's program or policy.

- (31) Notwithstanding the terms of any contract, franchise, agreement, release, or waiver, to require that in any civil or administrative proceeding in which a new motor vehicle dealer asserts any claims, rights, or defenses arising under this Article or under the franchise, that the dealer or any nonprevailing party compensate the manufacturer or prevailing party for any court costs, attorneys' fees, or other expenses incurred in the litigation.
- (32) To require that any of its franchised new motor vehicle dealers located in this State pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the dealers' existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the foregoing, nothing contained in this subdivision shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this State purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of vehicles.

- (33) To fail to reimburse a dealer located in this State in full for the actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of such a loaner vehicle is required by the manufacturer.
- (34) To require, coerce, or attempt to coerce any new motor vehicle dealer in this State to participate monetarily in any training program whose subject matter is not expressly limited to specific information necessary to sell or service the models of vehicles the dealer is authorized to sell or service under the dealer's franchise with that manufacturer. Examples of training programs with respect to which a manufacturer is prohibited from requiring the dealer's monetary participation include, but are not limited to, those which purport to teach morale-boosting employee motivation, teamwork, or general principles of customer relations. A manufacturer is further prohibited from requiring the personal attendance of an owner or dealer principal of any dealership located in this State at any meeting or training program at which it is reasonably possible for another member of the dealer's management to attend and later relate the subject matter of the meeting or training program to the dealership's owners or principal operator.
- (35) Notwithstanding the terms of any franchise, agreement, waiver or novation, to limit the number of franchises of the same line make of vehicle that any franchised motor vehicle dealer, including its parent(s), subsidiaries, and affiliates, if any, may own or operate or attach any restrictions or conditions on the ownership or operation of multiple franchises of the same line make of motor vehicle without making the same limitations, conditions, and restrictions applicable to all of its other franchisees.
- (36) With regard to any manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof that owns and operates a new motor vehicle dealership, directly or indirectly through any subsidiary or affiliated entity as provided in G.S. 20-305.2, to unreasonably discriminate against any other new motor vehicle dealer in the same line make in any matter governed by the motor vehicle franchise, including the sale or allocation of vehicles or other manufacturer or distributor products, or the execution of dealer programs for benefits.
- (37) Subdivisions (11) and (25) of this section shall not apply to any manufacturer, manufacturer branch, distributor, distributor branch, or any affiliate or subsidiary thereof of new motor vehicles which manufactures or distributes exclusively new motor vehicles with a gross weight rating of 8,500 pounds or more, provided that the following

conditions are met: (i) the manufacturer has, as of November 1, 1996, an agreement in effect with at least three of its franchised dealers within the State, and which agreement was, in fact, being enforced by the manufacturer, requiring the dealers to maintain separate and exclusive facilities for the vehicles it manufactures or distributes; and (ii) there existed at least seven dealerships (locations) of that manufacturer within the State as of January 1, 1999."

Section 3. G.S. 20-305.1(b) reads as rewritten:

"(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or rescission or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer. Any audit for warranty parts or service compensation shall only be for the 12-month period immediately following the date of the payment of the claim by the manufacturer, factory branch, distributor, or distributor branch. Any audit for sales incentives, service incentives, rebates, or other forms of incentive compensation shall only be for the ~~24-month~~ 12-month period immediately following the date of the ~~payment of the claim by the manufacturer, factory branch, distributor, or distributor branch.~~ termination of the sales incentives program, service incentives program, rebate program, or other form of incentive compensation program. Provided, however, these limitations shall not be effective in the case of fraudulent claims."

Section 3.1. G.S. 20-305.1 is amended by adding a new subsection to read:

"(b2) A manufacturer may not deny a motor vehicle dealer's claim for sales incentives, service incentives, rebates, or other forms of incentive compensation, reduce the amount to be paid to the dealer, or charge a dealer back subsequent to the payment of the claim unless it can be shown that the claim was false or fraudulent or that the dealer

failed to reasonably substantiate the claim either in accordance with the manufacturer's written procedures or by other reasonable means."

Section 4. G.S. 20-305.1(c) reads as rewritten:

"(c) In the event there is a dispute between the manufacturer, factory branch, distributor, or distributor branch, and the dealer with respect to any matter referred to in ~~subsections~~ subsection (a), (b), (b1), (b2), or (d) of this section, either party may petition the Commissioner in writing, within 30 days after either party has given written notice of the dispute to the other, for a hearing on the subject and the decision of the Commissioner shall be binding on the parties, subject to rights of judicial review and appeal as provided in Chapter 150B of the General Statutes; provided, however, that nothing contained herein shall give the Commissioner any authority as to the content of any manufacturer's or distributor's warranty. Upon the filing of a petition before the Commissioner under this subsection, any chargeback to or any payment required of a dealer by a manufacturer relating to warranty parts or service compensation, or to sales incentives, service incentives, rebates, or other forms of incentive compensation, shall be stayed during the pendency of the determination by the Commissioner."

Section 5. G.S. 20-305.2 reads as rewritten:

"§ 20-305.2. *Unfair methods of competition.*

(a) It is unlawful for any motor vehicle manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, to directly or indirectly through any subsidiary or affiliated entity, ~~own, own any ownership interest in, operate, or control any motor vehicle dealership in a relevant market area of this State already served by a motor vehicle dealer under a franchise for the same line make from such manufacturer, factory branch, distributor, or distributor branch, or subsidiary, in this State,~~ provided that this section shall not be construed to ~~prohibit~~ prohibit: (i)

(1) the operation by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, of a dealership for a temporary period (not to exceed one year) during the transition from one owner or operator to ~~another, another; or (ii)~~

(2) the ownership or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, ~~during a period while such dealership is being sold under a bona fide contract or purchase option to the operator of the dealership,~~ while in a bona fide relationship with an economically disadvantaged or other independent person, other than a manufacturer, factory branch, distributor, distributor branch, or an agent or affiliate thereof, who has made a bona fide, unencumbered initial investment of at least six percent (6%) of the total sales price that is subject to loss in the dealership and who can reasonably expect to acquire full ownership of the dealership within a reasonable

- period of time, not to exceed 12 years, and on reasonable terms and conditions; or (iii)
- (3) the ownership, operation or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if such manufacturer, factory branch, distributor, distributor branch, or subsidiary has been engaged in the retail sale of motor vehicles through such dealership for a continuous period of three years prior to March 16, 1973, and if the Commissioner determines, after a hearing on the matter at the request of any party, that there is no independent dealer available in the relevant market area to own and operate the franchise in a manner consistent with the public ~~interest,~~ interest; or (iv)
- (4) the ownership, operation, or control of a dealership by a manufacturer, factory branch, distributor, distributor branch, or subsidiary thereof, if the Commissioner determines after a hearing on the matter at the request of any party, that there is no independent dealer available in the relevant market area to own and operate the franchise in a manner consistent with the public ~~interest,~~ interest; or
- (5) the ownership, operation, or control of any facility (location) of a new motor vehicle dealer in this State at which the dealer sells only new and used motor vehicles with a gross weight rating of 8,500 pounds or more, provided that both of the following conditions have been met:
- a. the facility is located within 35 miles of manufacturing or assembling facilities existing as of January 1, 1999, and is owned or operated by the manufacturer, manufacturing branch, distributor, distributor branch, or any affiliate or subsidiary thereof which assembles, manufactures, or distributes new motor vehicles with a gross weight rating of 8,500 pounds or more by such dealer at said location; and
 - b. the facility is located in the largest Standard Metropolitan Statistical Area (SMSA) in the State; or
- (6) as to any line make of motor vehicle for which there is in aggregate no more than 13 franchised new motor vehicle dealers (locations) licensed and in operation within the State as of January 1, 1999, the ownership, operation, or control of one or more new motor vehicle dealership trading solely in such line make of vehicle by the manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof, provided however, that all of the following conditions are met:
- a. the manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof does not own directly or indirectly, in aggregate, in excess of forty-five percent (45%) interest in the dealership;

- b. at the time the manufacturer, factory branch, distributor, distributor branch, or subsidiary or affiliate thereof first acquires ownership or assumes operation or control with respect to any such dealership, the distance between the dealership thus owned, operated, or controlled and the nearest other new motor vehicle dealership trading in the same line make of vehicle, is no less than 35 miles;
- c. all the manufacturer's franchise agreements confer rights on the dealer of the line make to develop and operate within a defined geographic territory or area, as many dealership facilities as the dealer and manufacturer shall agree are appropriate; and
- d. that as of July 1, 1999, not fewer than half of the dealers of the line make within the State own and operate two or more dealership facilities in the geographic territory or area covered by the franchise agreement with the manufacturer.

(b) ~~Provided, this~~ This section shall not apply to manufacturers or distributors of ~~trailers~~ trailers, motor homes, or semitrailers."

Section 6. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 5:47 p.m. on the 22nd day of July, 1999.

S.B. 419

SESSION LAW 1999-336

AN ACT TO CLARIFY MOTOR VEHICLE DEALER TRANSFER RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-305(18) reads as rewritten:

"(18) To prevent or attempt to prevent a dealer from receiving fair and reasonable compensation for the value of the franchised business transferred in accordance with G.S. 20-305(4) ~~above~~, above, or to prevent or attempt to prevent, through the exercise of any contractual right of first refusal or otherwise, a dealer located in this State from transferring the franchised business to such persons or other entities as the dealer shall designate in accordance with G.S. 20-305(4). The opinion or determination of a manufacturer that the existence or location of one of its franchised dealers situated in this State is not viable or is not consistent with the manufacturer's distribution or marketing forecast or plans shall not constitute a lawful basis for the manufacturer to fail or refuse to approve a dealer's proposed transfer of ownership submitted in accordance with G.S. 20-305(4), or "good cause" for the termination, cancellation, or

nonrenewal of the franchise under G.S. 20-305(6) or for the rejection of an owner's designated successor appointed pursuant to G.S. 20-305(7). No manufacturer shall owe any duty to any actual or potential purchaser of a motor vehicle franchise located in this State to disclose to such actual or potential purchaser its own opinion or determination that the franchise being sold or otherwise transferred is not viable or is not consistent with the manufacturer's distribution or marketing forecast or plans."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 5:50 p.m. on the 22nd day of July, 1999.

S.B. 55

SESSION LAW 1999-337

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of S.L. 1998-158 reads as rewritten:

~~"Section 7. Section 5 of this act is effective for taxable years beginning on or after October 1, 1998. The remainder of this~~ This ~~act is effective when it becomes law."~~

Section 2. G.S. 1C-1601(a)(9) reads as rewritten:

"(a) Exempt property. -- Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of ~~his~~ creditors:

- (9) ~~Individual retirement accounts as described in Section 408(a) of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code. For purposes of this subdivision, 'Internal Revenue Code' means Code as defined in G.S. 105-228.90."~~

Section 3.(a) G.S. 10A-4(b) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

- (1) Be at least 18 years of age.
- (2) Reside or work in this State.
- (3) Satisfactorily complete a course of study that is approved by the Secretary and consists of not less than three hours nor

more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

- (4) Purchase and keep as a reference a manual approved by the Secretary that describes the duties, authority, and ethical responsibilities of notaries public.
- (5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.
- (6) Pay a nonrefundable fee of ~~twenty-five dollars (\$25.00),~~ thirty dollars (\$30.00)."

Section 3.(b) G.S. 10A-7(a) reads as rewritten:

"(a) The course of study required by G.S. 10A-4(b) shall be taught by an instructor certified in accordance with rules adopted by the Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

- (1) Complete and pass a six-hour instructor's course taught by the Director or other person approved by the Secretary.
- (2) Have six months of active experience as a notary public.
- (3) Maintain a current commission as a notary public.
- (4) Purchase the current notary public guidebook.
- (5) Pay a nonrefundable fee of fifty dollars (\$50.00).

~~thirty dollars (\$30.00) thirty dollars (\$30.00)"~~

Section 3.(c) This section becomes effective October 1, 1999.

Section 4. G.S. 28A-21-2(a) reads as rewritten:

"(a) Unless the time for filing the final account has been extended by the clerk of superior court, the personal representative or collector must file ~~his~~ the final account for settlement within one year ~~of his qualification after qualifying~~ or within six months after ~~his receipt of the State receiving a State estate or inheritance tax release,~~ whichever is later. If no estate or inheritance tax return was required to be filed for the estate under G.S. 105-23 because ~~the estate met the requirements of subsection (b) of that section,~~ estate, the personal representative or collector shall so certify in the final account filed with the clerk of superior court. Such certification shall list the amount and value of all of the decedent's property, and with respect to real estate, its particular location within or outside the State, including any property transferred by the decedent over which ~~he~~ the decedent had retained any ~~interest as described in G.S. 105-2(a)(3),~~ interest, or any property transferred within three years prior to the date of the decedent's death, and after being filed and accepted by the clerk of the superior court shall be prima facie evidence that such property is free

of any State inheritance or State estate tax liability. The personal representative or collector shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. With the approval of the clerk of superior court, such account may be filed voluntarily at any time. In all cases, the accounting shall be reviewed, audited and recorded by the clerk of superior court in the manner prescribed in G.S. 28A-21-1."

Section 5. G.S. 29-13 reads as rewritten:

"§ 29-13. *Descent and distribution upon intestacy.*

All the estate of a person dying intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment ~~by the recipient~~ of State inheritance or estate taxes, as provided in this Chapter."

Section 6. G.S. 29-20 reads as rewritten:

"§ 29-20. *Descent and distribution upon intestacy of illegitimate children.*

All the estate of a person dying illegitimate and intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against ~~his the~~ estate, and subject to the payment ~~by the recipient~~ of State inheritance or estate taxes, as provided in this Article."

Section 7. G.S. 36A-100(c) reads as rewritten:

"(c) A person having the right to designate the beneficiary under a life insurance policy, employee benefit plan or group life insurance policy described in subsection (a) or (b) of this section may designate as such beneficiary a trustee named or to be named in his will whether or not the will is in existence at the time of the designation. The proceeds received by the trustee shall be held and disposed of as part of the trust estate under the terms of the will as they exist at the death of the testator. If no qualified trustee makes claim to the proceeds within six months after the death of the decedent or if within that period it is established that no trustee can qualify to receive the proceeds, payments shall be made to the personal representative of the estate of the person making the designation unless it is otherwise provided by an alternative designation or by the policy or plan. The proceeds received by the trustee shall not be subject to claims against the estate of the decedent or to estate or inheritance taxes to any greater extent than if the proceeds were payable directly to the beneficiary or beneficiaries named in the trust. The proceeds may be commingled with any other assets which may properly become part of such trust, but the proceeds shall not become part of the decedent's estate for purposes of trust administration unless the will of the decedent expressly so provides."

Section 8. G.S. 36A-125(a) reads as rewritten:

"(a) If at any time the trustee of a noncharitable irrevocable trust determines in good faith that the value of the assets held in trust is ten thousand dollars (\$10,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of its administration would

defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may, but is not required to, terminate the trust and distribute the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust agreement; provided, however, that the trust property, including principal and undistributed income, shall be distributed to the income beneficiary of the trust if the trust otherwise qualifies for the marital deduction for federal estate tax or North Carolina estate or inheritance tax purposes, or is a Qualified Subchapter S Trust as defined in the Internal Revenue Code. The trustee may enter into an agreement or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust."

Section 9. G.S. 41-2.1(f) reads as rewritten:

"(f) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 10. G.S. 41-2.2(d) reads as rewritten:

"(d) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 11. G.S. 41-2.5(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to repeal or modify any of the provisions of Article 1 of Chapter 105 relating to the administration of the inheritance tax laws or any other provision of the law relating to~~ This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 12. G.S. 93B-15 reads as rewritten:

"§ 93B-15. *Payment of license fees by members of the armed forces.*

An individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return is granted an extension of time to pay any license fee charged by an occupational licensing board ~~or~~ as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax."

Section 13. G.S. 105-32.8 reads as rewritten:

"§ 105-32.8. *Federal determination that changes the amount of tax payable to the State.*

If the federal government corrects or otherwise determines the amount of the maximum state death tax credit allowed an estate under section 6166 of the Code, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within two years after being notified of the correction or final determination by the federal government, file a tax return with the

Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section ~~is subject to the penalties in G.S. 105-236 and forfeits the right to any refund due by reason of the determination.~~"

Section 14.(a) G.S. 105-37.1 reads as rewritten:

~~"§ 105-37.1. (Effective July 1, 1999) Amusements -- Forms of amusement not otherwise taxed.~~

~~(a) Every person engaged in the business of giving, offering, or managing any form of entertainment or amusement not otherwise taxed under this Article, for which an admission is charged, shall pay a tax upon the gross receipts of the business at the rate of three percent (3%). Reports shall be made to the Secretary within the first 10 days of each month covering all the gross receipts for the previous month, and the tax shall be paid monthly at the time the reports are made.~~

~~Every person giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay a tax upon the gross receipts derived from admission charges at the rate of three percent (3%). The tax upon gross receipts shall be levied and collected as prescribed by the Secretary.~~

~~(b) Counties shall not levy any license tax on the business taxed under this section, but cities may levy a license tax not in excess of twenty-five dollars (\$25.00).~~

~~(c), (d) Repealed by Session Laws 1998-95, s. 4, effective July 1, 1999.~~

~~"§ 105-37.1. (Effective July 1, 1999) Dances, athletic events, shows, exhibitions, and other entertainments.~~

~~(a) Scope. -- A privilege tax is imposed on the gross receipts of a person who is engaged in any of the following:~~

- ~~(1) Giving, offering, or managing a dance or an athletic contest for which an admission fee in excess of fifty cents (50¢) is charged.~~
- ~~(2) Giving, offering, or managing a form of amusement or entertainment that is not taxed by another provision of this Article and for which an admission fee is charged.~~
- ~~(3) Exhibiting a performance, show, or exhibition, such as a circus or dog show, that is not taxed by another provision of this Article.~~

~~(b) Rate and Payment. -- The rate of the privilege tax is three percent (3%) of the gross receipts from the activities described in subsection (a) of this section. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month.~~

(c) Advance Report. -- A person who owns or controls a performance, show, or exhibition subject to the tax imposed by this section and who plans to bring the performance to this State from outside the State must file a statement with the Secretary that lists the dates, times, and places of the performance, show, or exhibition. The statement must be filed no less than five days before the first performance, show, or exhibition in this State.

(d) Local Taxes. -- Cities may levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section; however, the tax may not exceed twenty-five dollars (\$25.00). Cities may levy a license tax on a person taxed under subdivision (a)(3) of this section; however, the tax may not exceed twenty-five dollars (\$25.00) for each day or part of a day the performance, show, or exhibition is given at each location.

Counties may not levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section. Counties may levy a license tax on a person taxed under subdivision (a)(3) to the same extent as a city."

Section 14.(b) G.S. 105-38 is repealed.

Section 15.(a) G.S. 105-38.1 reads as rewritten:

"§ 105-38.1. ~~Amusements~~ -- Motion picture shows.

(a) ~~Tax.~~ -- A privilege tax at the rate of one percent (1%) is imposed on the gross receipts of a person who is engaged in the business of operating a motion picture show for which an admission is charged. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month. If a person offers an entertainment or amusement that includes both a motion picture taxable under this section and an entertainment or amusement taxable under G.S. 105-37.1 or G.S. 105-38, G.S. 105-37.1, the tax in G.S. 105-37.1 or G.S. 105-38, as appropriate, that statute applies to the entire gross receipts and the tax levied in this section does not apply.

(b) ~~Exemption.~~ -- ~~Gross receipts from a motion picture show promoted and managed by a qualifying corporation that operates a center for the performing and visual arts is exempt from the tax imposed under this section if the motion picture is shown at the center and if the showing of motion pictures is not the primary purpose of the center. As used in this subsection, "qualifying corporation" and "center for the performing and visual arts" have the same meaning as in G.S. 105-40.~~

Section 15.(b) G.S. 105-40(7) reads as rewritten:

"(7) All ~~dances~~ dances, motion picture shows, and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts if the dance or other amusement is held at the center. "Qualifying corporation" means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). "Center for the performing and visual arts" means a facility, having a fixed location, that provides space for

dramatic performances, studios, classrooms, and similar accommodations to organized arts groups and individual artists. This exemption does not apply to athletic events."

Section 16. G.S. 105-109.1 is repealed.

Section 17. G.S. 105-113 is repealed.

Section 18. G.S. 105-113.27(c) reads as rewritten:

"(c) The possession of more than six hundred cigarettes ~~bearing the tax stamp of~~ on which tax has been paid to another state or country, by any person other than a licensed distributor, shall be is prima facie evidence that the cigarettes are possessed in violation of this Part."

Section 19. G.S. 105-113.106(4c) reads as rewritten:

"(4c) Low-street-value drug. -- Any of the following controlled substances:

- a. An anabolic steroid as defined in G.S. 90-91(k).
- b. A depressant described in ~~G.S. 90-89(d), 90-90(d), G.S. 90-89(4), 90-90(4), 90-91(b), or 90-92(a).~~
- c. A hallucinogenic substance described in ~~G.S. 90-89(c) or G.S. 90-90(e), G.S. 90-89(3) or G.S. 90-90(5).~~
- d. A stimulant described in ~~G.S. 90-89(e), 90-90(c), G.S. 90-89(5), 90-90(3), 90-91(j), 90-92(d), 90-92(a)(3), or 90-93(a)(3).~~ 90-93(a)(3).
- e. A controlled substance described in G.S. 90-91(c), (d), or (e), ~~90-92(c), (e), or (f), 90-92(a)(3), or (a)(5), or 90-93(a)(1).~~

Section 20. G.S. 105-114(b)(2) reads as rewritten:

"(b) Definitions. -- The following definitions apply in this Article:

- (2) Corporation. -- A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term does not include a limited liability company."

Section 21. G.S. 105-122(c)(1) reads as rewritten:

- "(c) (1) After ascertaining and determining the amount of its capital stock, surplus and undivided profits, as provided herein, every corporation permitted to allocate and apportion its net income for income tax purposes under the provisions of Article 4 of this Chapter shall apportion said capital stock, surplus and undivided profits to this State through use of the fraction computed for apportionment of its business income

under said Article. A corporation that is subject to franchise tax under this Article but is not subject to income tax under Article 4 of this Chapter must apportion its capital stock, surplus, and undivided profits to this State by using the apportionment formula that would apply to the corporation if it were subject to Article 4.

Provided, that although a corporation is authorized by the Tax Review Board to apportion its business income by use of an alternative formula or method, the corporation may not use such alternative formula or method for apportioning its capital stock, surplus and undivided profits unless specifically authorized to do so by order of the Tax Review Board.

Provided, further, that a corporation which is required to pay an income tax to this State on its entire net income shall apportion its entire capital stock, surplus and undivided profits to this State."

Section 22. G.S. 105-130.16 reads as rewritten:

"§ 105-130.16. *Returns.*

(a) Return. -- Every corporation doing business in this State shall file with the Secretary of Revenue must file with the Secretary an income tax return under affirmation, showing therein specifically the items of gross income and the deductions allowed by this Part, Part and such other facts as the Secretary may require for the purpose of making any other facts the Secretary requires to make any computation required by this Part. The return of a corporation shall be signed by either must be signed by its president, vice-president, treasurer, assistant treasurer, secretary secretary, or assistant secretary. There shall be annexed to the return the affirmation of the officer signing the same, which shall be in the form prescribed in G.S. 105-130.17 of this Part, and the same penalties prescribed in G.S. 105-236 shall apply to any person making wilful misstatements in said returns. The officer signing the return must furnish an affirmation verifying the return. The affirmation must be in the form required by the Secretary.

(b) Correction of Distortions. -- When the Secretary of Revenue has reason to believe that any corporation so conducts its trade or business in such manner as to either directly or indirectly distort its true net income and the net income properly attributable to the State, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, he may require such facts as he deems the Secretary may require any facts the Secretary considers necessary for the proper computation of the entire net income and the net income properly attributable to the State, and in determining same the Secretary of Revenue shall these computations, the Secretary must

have regard to the fair profit ~~which that~~ would normally arise from the conduct of the trade or business.

(c) Other Corrections. -- When any corporation liable to taxation under this Part conducts its business in such a manner as to either directly or indirectly benefit the members or stockholders thereof or any person interested in ~~such the~~ business by selling its products or goods or commodities in which it deals at less than the fair price which might be obtained therefor, or ~~where when~~ a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of ~~said the~~ corporations, or ~~where when~~ a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products of the corporation of which it so owns a substantial portion of the stock in such manner as to create a loss or improper net income for either of ~~said the~~ corporations, the Secretary of Revenue may determine the amount of taxable income of ~~any the~~ such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained by the ~~corporation or~~ corporations liable to taxation under this Part from dealing in such products, goods or commodities."

Section 23. G.S. 105-130.33(a) reads as rewritten:

"(a) Any corporation that constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed a credit against the tax imposed by this Part equal to ten percent (10%) of the installation and equipment costs of the hydroelectric generator paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars (\$5,000) for any single installation. No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits ~~allowable under this Part,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 24. G.S. 105-131.7(d) reads as rewritten:

"(d) The agreements required to be filed pursuant to subsection (c) of this section shall be filed at the following times:

- (1) At the time the annual return is required to be filed for the first taxable period for which the S Corporation becomes subject to the provisions of this ~~Division; and~~ Part.
- (2) At the time the annual return is required to be filed for any taxable period in which the corporation has a nonresident shareholder on whose behalf such an agreement has not been previously filed."

Section 25. G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. -- A husband and wife shall file a single income tax return jointly if (i) their federal taxable income is determined on a joint federal return and (ii) both spouses are residents of this State or both spouses have North Carolina taxable income. Except as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and severally liable for the tax imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section ~~6013~~ 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

Section 26. G.S. 105-154(c) reads as rewritten:

"(c) Information Returns of Partnerships. -- A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, and the adjustments required by this Part. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall specify the part of each person's distributive share of the net income that represents corporation dividends. The information return shall be signed by one of the partners under affirmation in the form ~~prescribed in G.S. 105-155~~ required by the Secretary.

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return."

Section 27. G.S. 105-163.011 reads as rewritten:

"§ 105-163.011. *(Repealed effective for investments made on or after January 1, 2003) Tax credits allowed.*

(a) No Credit for Brokered Investments. -- No credit is allowed under this section for a purchase of equity securities or subordinated debt if a broker's fee or commission or other similar remuneration is paid or given directly or indirectly for soliciting the purchase.

(b) Individuals. -- Subject to the limitations contained in G.S. 105-163.012, an individual who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business is allowed as a credit against the tax imposed by Part 2 of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, Part, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000). The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b1) Pass-Through Entities. -- This subsection does not apply to a pass-through entity that has committed capital under management in excess of five million dollars (\$5,000,000) or to a pass-through entity that is a qualified grantee business, a qualified business venture, or a North Carolina Enterprise Corporation. Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities or subordinated debt of a qualified grantee business or a qualified business venture directly from the business is eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a pass-through entity for one or more investments in a single taxable year under this Division, Part, whether directly or indirectly as owner of another pass-through entity, may not exceed seven hundred fifty thousand dollars (\$750,000). The pass-through entity is not eligible for the credit for the year in which the investment by the pass-through entity is made but shall be eligible for the credit for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

Each individual who is an owner of a pass-through entity is allowed as a credit against the tax imposed by Part 2 of this Article for the taxable year an amount equal to the owner's allocated share of the credits for which the pass-through entity is eligible under this subsection. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this Division, Part, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars (\$50,000).

If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(c) Application. -- To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the investment was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the investment was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If an investment for which a credit is applied for was paid for other than in money, the taxpayer shall include with the application a certified appraisal of the value of the property used to pay for the investment. The application for a credit for an investment made by a pass-through entity must be filed by the pass-through entity.

(d) Penalties. -- The penalties provided in G.S. 105-236 apply in this ~~Division, Part.~~

Section 28.(a) G.S. 105-164.3(8b) is recodified as G.S. 105-164.3(8c) and reads as rewritten:

"§ 105-164.3. *Definitions.*

The following definitions apply in this Article, except when the context clearly indicates a different meaning:

~~(8b)~~ (8c) "Motor vehicle" means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

- a. ~~A moped as defined in G.S. 20-4.01(27) (d1).~~ moped.
- b. ~~Special mobile equipment as defined in G.S. 20-4.01(44).~~ equipment.
- c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
- d. A farm tractor or other implement of husbandry.
- e. A manufactured home, a mobile office, or a mobile classroom.
- f. Road construction or road maintenance machinery or equipment."

Section 28.(b) G.S. 105-164.3 is amended by adding the following new subdivisions in the appropriate alphabetical order:

"(8b) Moped. -- A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

(16b) Special mobile equipment. -- Any of the following:

- a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus is driven on the highway only to get to and from a nonhighway job and is not designed or used primarily for the transportation of persons or property.
- b. A vehicle that has permanently attached special equipment and is used only for parade purposes.
- c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.
- d. A vehicle that has permanently attached playground equipment and is used only for playground purposes."

Section 28.(c) G.S. 20-4.01(21a) reads as rewritten:

"(21a) Moped. -- A type of passenger vehicle as defined in G.S. 20-4.01(27), G.S. 105-164.3."

Section 28.(d) G.S. 20-4.01(27)d1. reads as rewritten:

"d1. Moped. -- A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface. Defined in G.S. 105-164.3."

Section 28.(e) G.S. 20-4.01(44) reads as rewritten:

"(44) Special Mobile Equipment. -- Any of the following:

- a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus, is driven on the highway only to get to and from a nonhighway job, and is not designed or used primarily for the transportation of persons or property.
- b. A vehicle that has permanently attached special equipment and is used only for parade purposes.
- c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.
- d. A vehicle that has permanently attached playground equipment and is used only for playground purposes. Defined in G.S. 105-164.3."

Section 29. G.S. 105-164.4(a)(4) reads as rewritten:

"§ 105-164.4. *Tax imposed on retailers.*

(a) (Effective July 1, 1999) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

...

- (4) Every person engaged in the business of operating a dry cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses, is considered a retailer under this Article. A tax at the general rate of tax is levied on the gross receipts derived by these retailers from services rendered in engaging in any of the occupations or businesses named in this subdivision. The tax imposed by this subdivision does not apply to receipts derived from ~~coin or token-operated~~ coin, token, or card-operated washing machines, extractors, and dryers. The tax imposed by this subdivision does not apply to gross receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services."

Section 30. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department and pay fifteen dollars (\$15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer who makes taxable sales becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 31. G.S. 105-164.13(4d) reads as rewritten:

"(4d) The lease or rental of ~~burlap~~ tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse."

Section 32.(a) G.S. 105-187.43 reads as rewritten:

"§ 105-187.43. (Effective July 1, 1999) *Payment of the tax.*

(a) ~~Monthly Return.~~ **Payment.** -- The tax imposed by this Article is payable monthly to the Secretary. A monthly tax payment is due by the last day of the month that follows the month in which the tax accrues. The tax imposed by this Article on piped natural gas delivered to a sales or transportation customer accrues when the gas is delivered. The tax payable on piped natural gas received by a person who has direct access to an interstate pipeline for consumption by that person accrues when the gas is received.

(b) **Small Underpayments.** -- A person is not subject to interest on or penalties for an underpayment of a monthly amount due if the person timely pays at least ninety-five percent (95%) of the amount due and includes the underpayment with the next return the person files.

(c) Return. -- A return is due quarterly. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return."

Section 32.(b) G.S. 105-187.44 reads as rewritten:

"§ 105-187.44. (Effective July 1, 1999) *Distribution of part of tax proceeds to cities.*

(a) City Information. -- A ~~monthly~~ quarterly return filed under this Article must indicate the amount of tax attributable to the following:

- (1) Piped natural gas delivered during the ~~month~~ quarter to sales or transportation customers in each city in the State.
- (2) Piped natural gas received during the ~~month~~ quarter in each city in the State by persons who have direct access to an interstate gas pipeline and who receive the gas for their own consumption.

If a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city.

(b) Distribution. -- Within 75 days after the end of each calendar quarter, the Secretary must distribute to the cities part of the tax proceeds collected under this Article during that quarter. The amount to be distributed to a city is one-half of the amount of tax attributable to that city for that quarter under subsection (a) of this section."

Section 33. G.S. 105-194 reads as rewritten:

"§ 105-194. *Death of donor within three years; time of assessment.*

~~Where~~ If a donor dies within three years after filing a return, gift taxes may be assessed at any time within ~~said~~ those three years, or on or before the date of final settlement of the donor's State estate or inheritance taxes, whichever is later."

Section 34. G.S. 105-253(a) reads as rewritten:

"(a) Any officer, trustee, or receiver of any corporation or limited liability company required to file a report with the Secretary who has custody of funds of the corporation or company and who allows the funds to be paid out or distributed to the stockholders of the corporation or to the members of the company without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax."

Section 35.(a) G.S. 105-275 is amended by adding a new subdivision to read:

"(41) Objects of art held by the North Carolina Art Society, Incorporated."

Section 35.(b) G.S. 140-15 reads as rewritten:

~~"§ 140-15. Exemption from taxes.~~

~~All gifts made to the North Carolina State Art Society, Incorporated, shall be exempt from State gift and inheritance taxes, and objects of art held by the Society shall be exempt from ad valorem taxes."~~

Section 36. G.S. 105-449.37(a)(1a) reads as rewritten:

"§ 105-449.37. *Definitions; tax liability.*

(a) Definitions. -- The following definitions apply in this Article:

...

- (1a) Motor vehicle. -- A motor vehicle as defined in ~~G.S. 20-4.01(23)~~, G.S. 105-164.3(8c), other than special mobile equipment as defined in ~~G.S. 20-4.01(44)~~, G.S. 105-164.3(16b)."

Section 37. G.S. 105-449.39 reads as rewritten:

"§ 105-449.39. *Credit for payment of motor fuel tax.*

Every motor carrier subject to the tax levied by this Article is entitled to a credit on its quarterly report for tax paid by the carrier on fuel purchased in the State. ~~A motor carrier who files a quarterly report is entitled to a credit at a rate equal to~~ The amount of the credit is determined using the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. A motor carrier who files an annual report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable cents-per-gallon rates of tax in effect during the year for which the credit is claimed, covered by the report. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a ~~reporting period~~ quarter exceeds the motor carrier's liability for that ~~reporting period~~, quarter, the Secretary must refund the excess to the motor carrier."

Section 38. G.S. 105-449.42 reads as rewritten:

"§ 105-449.42. *Payment of tax.*

The tax levied by this Article is due when a motor carrier files a quarterly ~~or an annual~~ report under G.S. 105-449.45. The amount of tax due ~~shall be~~ is calculated ~~upon~~ on the amount of ~~gasoline or other~~ motor fuel or alternative fuel used by the motor carrier in its operations within this State during the ~~reporting period~~ quarter covered by the report."

Section 39. G.S. 105-449.44(a) reads as rewritten:

"(a) Calculation. -- The amount of ~~gasoline or other~~ motor fuel ~~used in the operations of any motor carrier within this State shall be such proportion of the total amount of such gasoline or other motor fuel used in its entire operations within and without this State as the total number of miles traveled within this State bears to the total number of miles traveled within and without this State,~~ or alternative fuel a motor carrier carries in its operations in this State for a reporting period is the ratio of the number of miles the motor carrier travels in this State during that period to the total number of miles the motor carrier travels inside and outside this State during that period, multiplied by the total amount of fuel the motor carrier uses in its operations inside and outside the State during that period."

Section 40. G.S. 105-449.45 reads as rewritten:

"§ 105-449.45. *Reports of carriers.*

(a) **Quarterly** Report. -- A motor carrier ~~shall~~ must report its operations to the Secretary on a quarterly basis unless ~~this subsection~~ subsection (b) of this section exempts the motor carrier from this

~~requirement or permits the motor carrier to report on a different basis. A motor carrier is not required to file a quarterly report if:~~

- ~~(1) All the motor carrier's operations during the quarter were made under a temporary permit issued under G.S. 105-449.49.~~
- ~~(2) The motor carrier is an intrastate motor carrier, as indicated on the motor carrier's application for registration with the Secretary.~~
- ~~(3) The motor carrier has been granted permission to file an annual report under subsection (b).~~

~~requirement. A quarterly report covers a calendar quarter and is due by the last day in April, July, October, and January.~~

~~(b) Exemptions. -- A motor carrier is not required to file a quarterly report if any of the following applies:~~

- ~~(1) All the motor carrier's operations during the quarter were made under a temporary permit issued under G.S. 105-449.49.~~
- ~~(2) The motor carrier is an intrastate motor carrier, as indicated on the motor carrier's application for registration with the Secretary.~~

~~Annual Report. -- The Secretary may authorize a motor carrier whose estimated annual tax liability under this Article does not exceed two hundred dollars (\$200.00) to file an annual report of its operations. The tax liability of a motor carrier that files an annual report shall be computed at a rate equal to the flat cents-per-gallon rate plus the average of the two cents-per-gallon rates in effect during the year for which the liability is computed.~~

~~An annual report covers a fiscal year beginning on July 1 and ending on the following June 30 and is due by July 31 after the end of a fiscal year. To file an annual report, a motor carrier must apply to the Secretary for permission to file on an annual basis. An application must be submitted by the date set by the Secretary. Once granted permission, a motor carrier may continue to file an annual report until notified by the Secretary to file a quarterly report.~~

~~(c) Other Reports. -- A motor carrier shall must file with the Secretary other reports concerning its operations that the Secretary requires.~~

~~(d) Penalties. -- A motor carrier that fails to file a report under this section by the required date is subject to a penalty of fifty dollars (\$50.00)."~~

Section 41. G.S. 105-449.47 reads as rewritten:

"§ 105-449.47. Registration of vehicles.

(a) Requirement. -- A motor carrier that is subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State any vehicle listed in the definition of motor vehicle unless both the motor carrier and the motor vehicle are registered with the motor carrier's base state jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement may not operate or cause to be operated in this State any vehicle listed

in the definition of motor ~~carrier~~ vehicle unless both the motor carrier and the motor vehicle are registered with the Secretary for purposes of the tax imposed by this Article.

~~Upon application, When the Secretary shall register registers a motor carrier and shall carrier, the Secretary must issue at least one identification marker for each motor vehicle operated by the motor carrier. Registrations and identification markers issued by the Secretary are for a calendar year. The Secretary may renew a registration or an identification marker without issuing a new registration or identification marker. All identification markers issued by the Secretary remain the property of the State. The Secretary may withhold or revoke a registration or an identification marker when a motor carrier fails to comply with this Article, former Article 36 or 36A of this Subchapter, or Article 36C or 36D of this Subchapter.~~

~~A motor carrier must carry a copy of the its registration of a motor carrier shall be carried in each motor vehicle operated by the motor carrier when the vehicle is in this State. An identification marker shall be clearly displayed at all times and shall A motor vehicle must clearly display an identification marker at all times. The identification marker must be affixed to the vehicle for which it was issued in the place and manner designated by the Secretary. authority that issued it. Registrations and identification markers required by this section shall be issued on a calendar year basis. The Secretary may renew a registration or an identification marker without issuing a new registration or identification marker. All identification markers issued by the Secretary remain the property of the State. The Secretary may withhold or revoke a registration or an identification marker when a motor carrier fails to comply with this Article or Article 36C or 36D of this Subchapter.~~

(b) Exemption. -- This section does not apply to the operation of a vehicle that is registered in another state and is operated temporarily in this State by a public utility, a governmental or cooperative provider of utility services, or a contractor for one of these entities for the purpose of restoring utility services in an emergency outage."

Section 42. G.S. 105-449.57 reads as rewritten:

"§ 105-449.57. *Cooperative agreements between jurisdictions.*

(a) Authority. -- The Secretary may enter into cooperative agreements with other jurisdictions for exchange of information in administering the tax imposed by this Article. No agreement, arrangement, declaration, or amendment to an agreement is effective until stated in writing and approved by the Secretary.

(b) Content. -- An agreement may provide for determining the base state for motor carriers, records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of ~~gasoline or other motor fuel~~

carrier taxes and penalties to another jurisdiction, and ~~such any~~ other provisions as that will facilitate the administration of the agreement.

(c) Disclosure. -- In accordance with G.S. 105-259, the Secretary may, as required by the terms of an agreement, forward to officials of another jurisdiction any information in the Department's possession relative to the use of ~~gasoline or other motor fuels~~ motor fuel or alternative fuel by any motor carrier. The Secretary may disclose to officials of another jurisdiction the location of offices, motor vehicles, and other real and personal property of motor carriers.

(d) Audits. -- An agreement may provide for each jurisdiction to audit the records of motor carriers based in the jurisdiction to determine if the ~~gasoline or other motor fuel~~ taxes due each jurisdiction are properly reported and paid. Each jurisdiction ~~shall~~ must forward the findings of the audits performed on motor carriers based in the jurisdiction to each jurisdiction in which the carrier has taxable use of ~~gasoline or other motor fuels~~, motor fuel or alternative fuel. For motor carriers not based in this State ~~who have taxable use of gasoline or other motor fuels in this State~~, the Secretary may utilize the audit findings received from another jurisdiction as the basis upon which to propose assessments of ~~gasoline or other motor fuel~~ taxes against the carrier as though the audit had been conducted by the Secretary. Penalties and interest ~~shall~~ must be assessed at the rates provided in the agreement.

No agreement entered into pursuant to this section may preclude the Department from auditing the records of any motor carrier covered by this Chapter.

The provisions of Article 9 of this Chapter apply to any assessment or order made under this section.

(e) Restriction. -- The Secretary may not enter into any agreement that would increase or decrease taxes and fees imposed under Subchapter V of Chapter 105 of the General ~~Statutes~~, Statutes, ~~and any~~ Any provision to the contrary is void."

Section 43. G.S. 105-449.52(b) reads as rewritten:

"(b) Hearing. -- ~~Any person denying liability for a penalty imposed under this section must pay the penalty under protest and apply to the Department of Revenue for a hearing. Upon receiving a request for a hearing, the Secretary shall schedule a hearing before a duly designated employee or agent of the Department within 30 days after receipt of the request. If after the hearing the Department determines that the person was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department determines that the person was liable for the penalty, the person paying the penalty may bring an action in the Superior Court of Wake County against the Secretary of Revenue for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of the vehicle without payment of the penalty. The procedure set out in G.S. 105-449.119 for protesting a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section.~~"

Section 44. G.S. 105-449.119 reads as rewritten:
 "§ 105-449.119. *Hearing on civil penalty assessment.*

A person who denies liability for a penalty imposed under this Part must pay the penalty under protest and make a written demand to the Department of Revenue for a refund. The written demand must be made within 30 days after the penalty is ~~imposed~~, imposed and must explain why the person is not liable for the penalty. Upon receiving a demand for a refund, the Secretary ~~shall~~ must schedule a hearing on the matter before an employee or an agent of the Department. The hearing must be held within 30 days after receiving the written demand for a refund. If, after the hearing, the Department determines that the person was not liable for the penalty, the amount collected ~~shall~~ must be refunded. ~~If~~ If, after the ~~hearing~~ hearing, the Department determines that the person was liable for the penalty, the person paying the penalty may appeal the imposition of the penalty in accordance with G.S. 105-241.2, 105-241.3, and 105-241.4."

Section 45. G.S. 160A-31(e2), as enacted by S.L. 1999-19, as it applies to the Town of Huntersville, reads as rewritten:

"(e2) Annexation of property subject to annexation under subsection (e1) of this section shall become effective as to each tract of such property or such part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 and no longer meets the requirements of subdivision (e1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subsection, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes, nor is the tract or part of the tract entitled to services provided by the city. When annexation becomes effective pursuant to this subsection as to a tract or part of a tract, the city shall provide all required services upon payment of city taxes."

Section 46. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 47. Except as otherwise provided in this act, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 8:30 p.m. on the 22nd day of July, 1999.

S.B. 290

SESSION LAW 1999-338

AN ACT TO AMEND THE LOBBYING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars (\$10.00), in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 2. G.S. 120-47.7(d) reads as rewritten:

"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars (\$10.00), in an amount equal to the late filing fee under G.S. 163-278.34(a)(2).

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. This act becomes effective January 1, 2000.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 8:32 p.m. on the 22nd day of July, 1999.

S.B. 323

SESSION LAW 1999-339

AN ACT TO EXTEND WATERFOWL HUNTING PRIVILEGES TO HOLDERS OF COMPREHENSIVE HUNTING LICENSES, TO INCREASE THE FEE CHARGED FOR MIGRATORY WATERFOWL LICENSES, AND TO INCREASE THE APPLICATION FEE FOR MANAGED HUNTS FOR MIGRATORY WATERFOWL AND REQUIRE APPLICANTS TO FURNISH SATISFACTORY PROOF OF POSSESSION OF THE NECESSARY HUNTING LICENSE.

The General Assembly of North Carolina enacts:

Section 1 G.S. 113-129 is amended by adding a new subdivision to read:

"(11c) Migratory Waterfowl; Waterfowl. -- Those migratory birds for which open seasons are prescribed by the United States Department of the Interior and belonging

to the Family Anatidae (wild ducks, geese, brant, and swans)."

Section 2. G.S. 113-129(11c) reads as rewritten:

"~~(11c)~~ (11d) Nongame Animals. -- All wild animals except game and fur-bearing animals."

Section 3. G.S. 113-129(11d) reads as rewritten:

"~~(11d)~~ (11e) Nongame Birds. -- All wild birds except game birds."

Section 4. G.S. 113-270.1D(a) reads as rewritten:

"(a) Annual Sportsman License -- \$40.00. This license shall be issued only to an individual resident of the State and entitles the holder to take all wild animals and wild birds, ~~other than~~ including waterfowl, by all lawful methods in all open seasons, including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters."

Section 5. G.S. 113-270.2(a) reads as rewritten:

"(a) The hunting licenses set forth in subdivisions (1), (3), and (6) of subsection (c) of this section entitle the holder to take, except on game lands, wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons. The comprehensive hunting licenses of subdivisions (2) and (5) of subsection (c) of this section further entitle the holder to take big game and waterfowl and to use game lands."

Section 6. G.S. 113-270.3(b)(5) reads as rewritten:

"(5) Migratory Waterfowl Hunting License -- ~~\$5.00.~~ \$10.00.

This license shall be issued to an individual resident or nonresident of the State and entitles the holder to take migratory waterfowl in accordance with applicable laws and regulations. The Wildlife Resources Commission may implement this license requirement through the sale of an official waterfowl stamp which may be a facsimile, in an appropriate size, of the waterfowl conservation print authorized by G.S. 113-270.2B. An amount not less than one-half of the annual proceeds from the sale of this license shall be used by the Commission for cooperative waterfowl habitat improvement projects through contracts with local waterfowl interests, with the remainder of the proceeds to be used by the Commission in its statewide programs for the conservation of waterfowl."

Section 7. G.S. 113-291.2(a) reads as rewritten:

"(a) In accordance with the supply of wildlife and other factors it determines to be of public importance, the Wildlife Resources Commission may fix seasons and bag limits upon the wild animals and wild birds authorized to be taken that it deems necessary or desirable in the interests of the conservation of wildlife resources. The authority to fix seasons includes the closing of seasons completely when necessary and fixing the hours of hunting. The authority to fix bag limits includes the setting of season and possession limits. Different

seasons and bag limits may be set in differing areas; early or extended seasons and different or unlimited bag limits may be authorized on controlled shooting preserves, game lands, and public hunting grounds; and special or extended seasons may be fixed for those engaging in falconry, using primitive weapons, or taking wildlife under other special conditions. ~~Unless modified~~

Unless modified by rules of the Wildlife Resources Commission, the seasons, shooting hours, bag limits, and possession limits fixed by the United States Department of Interior or any successor agency for migratory game birds in North Carolina must be followed, and a violation of the applicable federal rules is hereby made unlawful. When the applicable federal rules require that the State limit participation in seasons and/or bag limits for migratory game birds, the Wildlife Resources Commission may schedule managed hunts for migratory game birds. Participants in such hunts shall be selected at random by computer from properly licensed ~~applicants~~, applicants, and each applicant shall provide proof satisfactory to the Wildlife Resources Commission that the applicant is the lawful holder of a North Carolina hunting license that has the applicable migratory game bird hunting privilege. ~~A nonrefundable fee of five dollars (\$5.00)~~ ten dollars (\$10.00) shall be required of each applicant to defray the cost of processing the applications.

Where there is a muzzle-loading firearm season for deer, with a bag limit of five or more, one antlerless deer may be taken. Dogs may not be used for hunting deer during such season."

Section 8. This act becomes effective July 1, 1999.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 8:35 p.m. on the 22nd day of July, 1999.

H.B. 276

SESSION LAW 1999-340

AN ACT MAKING VARIOUS CHANGES TO THE EMPLOYMENT SECURITY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(a) is amended by adding two new subdivisions to read:

"(10) Employers electing to do so may pay their quarterly tax contributions by electronic funds transfer. When an electronic funds transfer cannot be completed due to insufficient funds or the nonexistence of an account of the transferor, the Commission shall assess a penalty equal to ten percent (10%) of the amount of the transfer, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). The Commission may waive this penalty for good cause shown. As used in this section, the term 'electronic funds transfer' means a

transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

- (11) The Commission may establish policies to allow taxes to be payable under certain conditions by credit card. A condition of payment by credit card is receipt by the Commission of the full amount of taxes, penalties, and interest due. The Commission shall require an employer who pays by credit card to include an amount equal to any fee charged the Commission for the use of the card. A payment of taxes that is made by credit card and is not honored by the card issuer does not relieve the employer of the obligation to pay the taxes."

Section 2. G.S. 96-9(a)(7) reads as rewritten:

- "(7) Effective with the quarter ending September 30, ~~1992~~, 1999, every employer with ~~250~~ 100 or more employees, and every person or organization that, as agent, reports wages on a total of ~~250~~ 100 or more employees on behalf of one or more subject employers, shall file that portion of the "Employer's Quarterly Tax and Wage Report" that contains the name, social security number, and gross wages of each individual in employment on magnetic tapes or diskettes in a format prescribed by the Commission.

For failure of an employer to comply with this

subdivision, there shall be added to the amount required to be shown as tax in the reports a penalty of twenty-five dollars (\$25.00). For failure of an agent to comply with this subdivision, the Commission may deny the agent the right to report wages and file reports for the employer for whom the agent filed an improper report for a period of one year following the calendar quarter in which that agent filed the improper report. The Commission may reduce or waive a penalty for good cause shown."

Section 3. G.S. 96-9(c)(4)b. reads as rewritten:

- "b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, ~~his~~ the successor's rate of contribution for the period from ~~such that~~ such date to the end of the then current contribution year shall be the same as ~~his~~ the successor's rate in effect on the date of ~~such~~ the acquisition. If the successor was not an employer prior to the date of the acquisition of the ~~business~~ business, ~~he~~ the successor shall be assigned a standard beginning rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which ~~he~~ the successor acquired the business of the predecessor; however, if ~~such~~ the successor makes application for the transfer of the account within 60

days after notification by the Commission of ~~his~~ the right to do so and the account is transferred, or meets the requirements for mandatory transfer, ~~he~~ the successor shall be assigned for the remainder of ~~such~~ the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, provided as long as there was only one predecessor or if more than one and or, if more than one, the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

Irrespective of any other provisions of this Chapter, when an account is transferred in its entirety by an employer to a successor, the transferring employer shall thereafter pay the standard beginning rate of contributions of ~~two and seven-tenths percent (2.7%)~~ set forth in G.S. 96-9(b)(1) and shall continue to pay at such rate until he that rate until the transferring employer qualifies for a reduction, reacquires the account he transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3). ~~However, when an account is transferred in its entirety by an employer to a successor on or after January 1, 1987, the transferring employer shall thereafter pay the standard beginning rate of contributions of two and twenty-five hundredths percent (2.25%) and shall continue to pay at such rate until he qualifies for a reduction, reacquires the account he transferred or acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3).~~"

Section 4. G.S. 96-12.01(b) reads as rewritten:

"(b) Effect of State Law Provisions Relating to Regular Benefits on Claims for, and for Payment of, Extended Benefits. -- Except when the result would be inconsistent with ~~G.S. 96-12 or~~ the other provisions of this ~~section,~~ section and in matters of eligibility determination, as provided in the regulations of the Commission, the provisions of this Chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits."

Section 5. G.S. 96-12.01(c) is amended by adding a new subdivision to read:

"(5) An individual shall not be eligible for extended compensation unless the individual had 20 weeks of

full-time insured employment, or the equivalent in insured wages, as determined by a calculation of base period wages based upon total hours worked during each quarter of the base period and the hourly wage rate for each quarter of the base period. For the purposes of this paragraph, the equivalent in insured wages shall be earnings covered by the State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or one and one-half times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest."

Section 6. G.S. 96-15(a) reads as rewritten:

"(a) Filing. -- Claims for benefits shall be made in accordance with such regulations as the Commission may prescribe. Employers may file claims for employees through the use of automation in the case of partial unemployment. Each employing unit shall post and maintain in places readily accessible to individuals performing services for it printed statements, concerning benefit rights, claims for benefits, and such other matters relating to the administration of this Chapter as the Commission may direct. Each employing unit shall supply to such individuals copies of such printed statements or other materials relating to claims for benefits as the Commission may direct. Such printed statements and other materials shall be supplied by the Commission to each employing unit without cost to the employing unit."

Section 7. G.S. 96-15(b)(2) reads as rewritten:

"(2) Adjudication. -- When a protest is made by the claimant to the initial or monetary determination, or a question or issue is raised or presented as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, or benefits denied or adjusted pursuant to G.S. 96-18, the matter shall be referred to an adjudicator. The adjudicator may consider any matter, document or statement deemed to be pertinent to the issues, including telephone conversations, and after such consideration shall render a conclusion as to the claimant's benefit entitlements. The adjudicator shall notify the claimant and all other interested parties of the conclusion reached. The conclusion of the adjudicator shall be deemed the final decision of the Commission unless within 10 working 15 days after the date of notification or mailing of the conclusion, whichever is earlier, a written appeal is filed pursuant to such regulations as the Commission may adopt. The Commission shall be deemed an interested party for such purposes and may remove to itself or transfer to an appeals referee the proceedings involving any claim pending before an adjudicator.

Provided, any interested employer shall be allowed ~~10 working~~ 15 days from the earlier of mailing or delivery of the notice of the filing of a claim against the employer's account to protest the claim and have the claim referred to an adjudicator for a decision on the question or issue raised. Provided further, no question or issue may be raised or presented by the Commission as to the eligibility of a claimant under G.S. 96-13, or whether any disqualification should be imposed under G.S. 96-14, after ~~20 working~~ 45 days from the first day of the first week after the question or issue occurs with respect to which week an individual filed a claim for benefits. None of the provisions of this subsection shall have the force and effect nor shall the same be construed or interested as repealing any of the provisions of G.S. 96-18."

Section 8. G.S. 105-259(b)(9a) reads as rewritten:

"(9a) To furnish information to the Employment Security Commission to the extent required for its NC WORKS study of the working poor pursuant to G.S. 108A-29(r). The Employment Security Commission shall use information furnished to it under this subdivision only in a nonidentifying form for statistical and analytical purposes related to its NC WORKS study. The information that may be furnished under this subdivision is the following with respect to individual income taxpayers, as shown on the North Carolina income tax forms:

- a. Name, social security number, spouse's name, spouse's social security number, and county of residence.
- b. Filing status and federal personal exemptions.
- c. Federal taxable income, additions to federal taxable income, and total of federal taxable income plus additional income.
- d. Income while a North Carolina resident, total income from North Carolina sources while a nonresident, and total income from all sources.
- e. Exemption for children, nonresidents' and part-year residents' exemption for children, and credit for children.
- f. Expenses for child and dependent care, portion of expenses paid while a resident of North Carolina, portion of expenses paid while a resident of North Carolina that was incurred for dependents who were under the age of seven and dependents who were physically or mentally incapable of caring for themselves, credit for child and dependent care expenses, other qualifying expenses, credit for other

qualifying expenses, total credit for child and dependent care expenses."

Section 9. G.S. 108A-29(q) reads as rewritten:

"(q) Each county Employment Security Commission local or branch office shall organize a Job Service Employer Committee, based on the membership makeup of the Job Service Employer Committees in existence at the time this act becomes law. Committee. The Chairman of the Employment Security Commission shall appoint the Job Service Employer Committee members, each of whom shall serve two-year terms, from persons nominated by the local Job Service Employer Committee. The Employment Security Commission shall organize a State Job Service Employer Committee consisting of eight members who shall serve two-year terms. The Chairman of the Employment Security Commission shall appoint the State Job Service Employer Committee members after consultation with the Governor. The Employment Security Commission shall adopt rules and regulations concerning the meeting schedule and the conduct of meetings of each Job Service Employer Committee. Each Job Service Employer Committee in counties participating in the First Stop Employment Program shall oversee the operation of the First Stop Employment Program in that county and shall report to the local Employment Security Commission quarterly on its recommendations to improve the First Stop Employment Program. The Employment Security Commission shall develop the reporting method and time frame and shall coordinate a full report to be presented to the Joint Legislative Public Assistance Commission by the end of each calendar year. ~~Counties having a Workforce Development Board may designate the Board to perform the duties described in this section rather than organizing a Job Service Employer Committee."~~

Section 10. G.S. 96-4(t)(1) reads as rewritten:

"(t) Confidentiality of Records, Reports, and Information Obtained from ~~Claimants and Employers.~~ Claimants, Employers, and Units of Government.

- (1) Confidentiality of Information Contained in Records and Reports. -- (i) Except as hereinafter otherwise provided, it shall be unlawful for any person to obtain, disclose, or use, or to authorize or permit the use of any information which is obtained from any employing ~~unit or individual unit,~~ individual, or unit of government pursuant to the administration of this ~~Chapter.~~ Chapter or G.S. 108A-29. (ii) Any claimant or employer or their legal representatives shall be supplied with information from the records of the Employment Security Commission to the extent necessary for the proper presentation of claims or defenses in any proceeding under this Chapter. Notwithstanding any other provision of law, any claimant may be supplied, subject to restrictions as the Commission may by regulation prescribe, with any information contained in his payment record or on his most recent monetary determination, and any individual,

as well as any interested employer, may be supplied with information as to the individual's potential benefit rights from claim records. (iii) Subject to restrictions as the Commission may by regulation provide, information from the records of the Employment Security Commission may be made available to any agency or public official for any purpose for which disclosure is required by statute or regulation. (iv) The Commission may, in its sole discretion, permit the use of information in its possession by public officials in the performance of their public duties. (v) The Commission shall release the payment and the amount of unemployment compensation benefits upon receipt of a subpoena in a proceeding involving child support. (vi) The Commission shall furnish to the State Controller any information the State Controller needs to prepare and publish a comprehensive annual financial report of the State or to track debtors of the State."

Section 11. G.S. 96-12(b)(4) reads as rewritten:

"(4) **Qualifying Wages for Second Benefit Year.** -- An individual whose prior benefit year has expired and who files a new benefit claim is not entitled to benefits unless the individual has been paid qualifying wages since the beginning date of the prior benefit year and before the date the new benefit claim was filed equal to at least ~~10 times the individual's weekly benefit amount under the new benefit claim,~~ six times the average weekly insured wage, obtained in accordance with G.S. 96-8(22), and has been paid wages in at least two quarters of the individual's base period. "Qualifying wages" are wages earned with an employer subject to the provisions of this Chapter or some other state employment security law or in federal service as defined in 5 U.S.C. Chapter 85."

Section 12. Sections 3, 7, and 11 of this act become effective July 1, 1999, with Sections 7 and 11 applying to unemployment insurance claims filed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 1999.

Became law upon approval of the Governor at 8:37 p.m. on the 22nd day of July, 1999.

H.B. 1433

SESSION LAW 1999-341

AN ACT TO PROVIDE FOR INDIVIDUALS TO PAY THEIR ANNUAL USE TAX WITH THEIR INCOME TAX FORMS, TO PROMOTE ELECTRONIC FILING, AND TO IMPROVE TAX COLLECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. -- ~~Notwithstanding subsection (b),~~ Use tax payable by an individual who purchases tangible personal property outside the State for a nonbusiness purpose shall file a use tax return is due on an annual basis. The For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return. year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14."

Section 2. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-269.14. *Payment of use tax with individual income tax.*

(a) Requirement. -- An individual who owes use tax that is payable on an annual basis pursuant to G.S. 105-164.16(d) and who is required to file an individual income tax return under Part 2 of Article 4 of this Chapter must pay the use tax with the individual income tax return for the taxable year. The Secretary must provide appropriate space and information on the individual income tax form and instructions. The information must include the following:

- (1) An explanation of an individual's obligation to pay use tax on items purchased from mail order, Internet, or other sellers that do not collect State and local sales and use taxes on the items.
- (2) A method to help an individual determine the amount of use tax the individual owes. The method must list categories of items, such as personal computers and clothing, that are commonly sold by mail order or Internet and must include a table that gives the average amounts of use tax payable by taxpayers in various income ranges.

(b) Distribution. -- The Secretary must distribute one-third of the net use tax proceeds collected under this section to counties and cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section."

Section 3. To pay for the costs of programming, form revision, and resources for taxpayer assistance to implement Sections 1 and 2 of this act, the Secretary of Revenue may draw up to one hundred fifty thousand dollars (\$150,000) for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act.

Section 4. During the 1999-2000 fiscal year, the Secretary of Revenue shall implement a program to allow those taxpayers required

under G.S. 105-164.16 to report and pay sales and use taxes on a semimonthly basis to file the semimonthly return electronically. To pay for this program, the Secretary may draw up to five hundred thousand dollars (\$500,000) for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act.

Section 5.(a) The Secretary of Revenue shall contract during the 1999-2001 fiscal biennium for the collection of delinquent tax debts owed by nonresidents and foreign entities. To implement this section, the Secretary may draw funds for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. The Secretary of Revenue shall report annually to the Revenue Laws Study Committee on its collections pursuant to this contract during the biennium.

Section 5.(b) The following definitions apply in this section:

- (1) Delinquent tax debt. -- The amount of tax due as stated in a final notice of assessment issued to the taxpayer by the Secretary of Revenue when the taxpayer no longer has a right to contest the debt.
- (2) Foreign entity. -- A foreign corporation as defined in G.S. 55-1-40, a foreign limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership as defined in G.S. 59-102, or a general partnership formed under the laws of a jurisdiction other than this State.

Section 6. The Department of Revenue shall conduct a study to identify and evaluate proposals for more efficient collection of taxes, including using electronic commerce and other technology to increase efficiency. The study shall include an analysis of the most efficient tax collection methods used in other states. The State Controller shall cooperate with the Department of Revenue in this study. The Department shall report the results of its study, including findings, recommendations, and estimated revenue gains of each recommendation, to the Revenue Laws Study Committee by May 1, 2000. To implement this section, the Secretary of Revenue may draw up to fifty thousand dollars (\$50,000) for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act.

Section 7. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-59.1. Contracts with certain foreign vendors.

The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies. For the purpose of this section, the term 'affiliate' has the meaning provided in G.S. 105-163.010."

Section 8. G.S. 105-259(b) is amended by adding two new subdivisions to read:

- "(22) To provide the Secretary of Administration pursuant to G.S. 143-59.1 a list of vendors and their affiliates who meet one or more of the conditions of G.S. 105-164.8(b) but refuse to collect the use tax levied under Article 5 of this Chapter on their sales delivered to North Carolina.
- (23) To provide public access to a database containing the names and account numbers of taxpayers who are not required to pay sales and use taxes under Article 5 of this Chapter to a retailer because of an exemption or because they are authorized to pay the tax directly to the Department of Revenue."

Section 9. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 1999. The remainder of this act becomes effective July 1, 1999.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 8:39 p.m. on the 22nd day of July, 1999.

H.B. 1472

SESSION LAW 1999-342

AN ACT TO SIMPLIFY AND MODERNIZE TAX CREDITS FOR INVESTING IN RENEWABLE ENERGY SOURCES.

The General Assembly of North Carolina enacts:

Section 1. The following sections of Chapter 105 of the General Statutes are repealed:

§ 105-130.23. Credit against corporate income tax for solar energy equipment in residential buildings.

§ 105-151.2. Credit for solar energy equipment.

§ 105-130.26. Credit for conversion of industrial boiler to wood fuel.

§ 105-151.5. Credit for conversion of industrial boiler to wood fuel.

§ 105-130.27A. Credit for construction of a peat facility.

§ 105-130.29. Credit for construction of an olivine brick facility.

§ 105-130.30. Credit for construction of a methane gas facility.

§ 105-151.10. Credit for construction of a methane gas facility.

§ 105-130.31. Credit for installation of a wind energy device.

§ 105-151.9. Credit for installation of a wind energy device.

§ 105-130.32. Credit for installation of solar energy equipment for the production of heat or electricity in certain processes.

§ 105-151.8. Credit for installation of solar energy equipment for the production of heat or electricity in certain processes.

§ 105-130.33. Credit against corporate income tax for installation of a hydroelectric generator.

§ 105-151.7. Credit for installation of a hydroelectric generator.

Section 2. Article 3B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3B.

"Business Tax Credit, and Energy Tax Credits.

"§ 105-129.15. Definitions.

The following definitions apply in this Article:

- (1) Business property. -- Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The term does not include, however, a luxury passenger automobile taxable under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.
- (2) Cost. -- In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).
- ~~(3) Purchase. -- Defined in section 179 of the Code.~~
- (3) Hydroelectric generator. -- A machine that produces electricity by water power or by the friction of water or steam.
- (4) Purchase. -- Defined in section 179 of the Code.
- (5) Renewable biomass resources. -- Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, landfill wastes, and animal wastes.
- (6) Renewable energy property. -- Any of the following machinery and equipment or real property:
 - a. Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.
 - b. Hydroelectric generators located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.
 - c. Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or

commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

- d. Wind equipment required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning, and storing the electricity produced.

"§ 105-129.16. *Credit for investing in business property.*

(a) Credit. -- If a taxpayer that has purchased or leased business property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to four and one-half percent (4.5%) of the cost of the property. The maximum credit allowed a taxpayer for property placed in service during a taxable year is four thousand five hundred dollars (\$4,500). The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. -- If, in one of the five years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) No Double Credit. -- A taxpayer that claims the credit allowed under Article 3A of this Chapter with respect to business property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for business property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not capitalize the property for tax purposes under the Code and the lessor will not claim the credit allowed in this section with respect to the property.

"§ 105-129.16A. *Credit for investing in renewable energy property.*

(a) Credit. -- If a taxpayer that has constructed, purchased, or leased renewable energy property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable energy property that serves a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. -- If, in one of the years in which the installment of a credit accrues, the renewable energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved

out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. No credit is allowed under this section to the extent the cost of the renewable energy property was provided by public funds.

(c) Ceilings. -- The credit allowed by this section may not exceed the applicable ceilings provided in this subsection.

- (1) Nonresidential Property. -- A ceiling of two hundred fifty thousand dollars (\$250,000) per installation applies to renewable energy property placed in service for any purpose other than residential.
- (2) Residential Property. -- The following ceilings apply to renewable energy property placed in service for residential purposes:
 - a. One thousand four hundred dollars (\$1,400) per dwelling unit for solar energy equipment for domestic water heating.
 - b. Three thousand five hundred dollars (\$3,500) per dwelling unit for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.
 - c. Ten thousand five hundred dollars (\$10,500) per installation for any other renewable energy property for residential purposes.

(d) No Double Credit. -- A taxpayer that claims any other credit allowed under this Chapter with respect to renewable energy property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for renewable energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the property.

"§ 105-129.17. *Tax election; cap.*

(a) Tax Election. -- The ~~credit~~ credits allowed in this Article ~~is~~ are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of ~~the~~ a credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- ~~The~~ A credit allowed in this Article may not exceed fifty percent (50%) of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

"§ 105-129.18. *Substantiation.*

To claim ~~the~~ a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for ~~the~~ a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"§ 105-129.19. Reports.

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of taxpayers that claimed the ~~credit~~ credits allowed in this Article.
- (2) The cost of business property and renewable energy property with respect to which credits were claimed.
- (3) The total cost to the General Fund of the credits claimed."

Section 3. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute repealed by this act before the effective date of its repeal, nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal.

Section 4. This act is effective for taxable years beginning on or after January 1, 2000.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 8:41 p.m. on the 22nd day of July, 1999.

S.B. 513

SESSION LAW 1999-343

AN ACT TO REQUIRE HEALTH BENEFIT PLANS THAT COVER PRESCRIPTION DRUGS TO ISSUE UNIFORM PRESCRIPTION DRUG IDENTIFICATION CARDS.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 58 of the General Statutes is amended by adding the following section to read:

"§ 58-3-177. Uniform prescription drug identification cards.

(a) Every health benefit plan that provides coverage for prescription drugs or devices and that issues a prescription drug card, shall issue to its insureds a uniform prescription drug identification card. The uniform prescription drug identification card shall contain the information listed in subdivisions (1) through (7) of this subsection in the following order beginning at the top left margin of the card:

- (1) The health benefit plan's name and/or logo.

- (2) The American National Standards Institute assigned Issuer Identification Number.
- (3) The processor control number.
- (4) The insured's group number.
- (5) The health benefit plan's card issuer identifier.
- (6) The insured's identification number.
- (7) The insured's name.

(a) In addition to the information required under subsection (a), the uniform prescription drug card shall contain, in one of the lower-most elements on the back side of the card, the following information:

- (1) The health benefit plan's claims submission name and address.
- (2) The health benefit plan's help desk telephone number and name.

Nothing in this section shall require a health benefit plan to violate a contractual agreement, service mark agreement, or trademark agreement.

(b) A new uniform prescription drug identification card as required under subsection (a) of this section shall be issued annually by a health benefit plan if there has been any change in the insured's coverage in the previous 12 months. A change in the insured's coverage shall include, but is not limited to, the addition or deletion of a dependent of the insured covered by a health benefit plan.

(c) Not later than January 1, 2003, the uniform prescription drug identification card provided under subsection (a) of this section shall contain one of the following mediums capable of the processing or adjudicating of a claim through electronic verification:

- (1) A magnetic strip.
- (2) A bar code.
- (3) Any new technology available that is capable of processing or adjudicating a claim by electronic verification.

(d) As used in this section, 'health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. 'Health benefit plan' does not mean any of the following kinds of insurance:

- (1) Accident.
- (2) Credit.
- (3) Disability income.
- (4) Long-term or nursing home care.
- (5) Medicare supplement.
- (6) Specified disease.
- (7) Dental or vision.
- (8) Coverage issued as a supplement to liability insurance.

- (9) Workers' compensation.
- (10) Medical payments under automobile or homeowners.
- (11) Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.
- (12) Hospital income or indemnity.

(e) This section shall not apply to an entity that has its own facility and employs or contracts with physicians, pharmacists, nurses, and other health care personnel, to the extent that the entity dispenses prescription drugs or devices from its own pharmacies to its employees and to enrollees of its health benefit plan. This section does not apply to a health benefit plan that issues a single identification card to its insureds for all services covered under the plan."

Section 2. This act is effective when it becomes law and, except as provided in G.S. 58-3-177(c) as enacted in Section 1 of this act, applies to health benefit plans that are delivered, issued for delivery, or renewed on and after July 1, 2000. For purposes of this act, renewal of a health benefit policy, contract, or plan is presumed to occur on each anniversary of the date on which coverage was first effective on the person or persons covered by the health benefit plan.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 8:45 p.m. on the 22nd day of July, 1999.

S.B. 785

SESSION LAW 1999-344

AN ACT TO AMEND THE LAW REGARDING THE INSPECTION AND REGULATION OF LIQUEFIED PETROLEUM GASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 119-58 reads as rewritten:

"§ 119-58. *Unlawful acts.*

(a) It shall be an unlawful act for any person to:

- (1) Sell any liquefied petroleum gas burning appliance designed or built for domestic use ~~which that~~ has not been approved by the American Gas Association, Inc., the Underwriters Laboratory, Inc., or other laboratory approved by the Commissioner of Agriculture; Building Code Council.
- (2) ~~Install any unvented space heating appliance in a manufactured home as defined in G.S. 143-145(7);~~
- (3) ~~Install any unvented space heating appliance in a sleeping room that has an input of over 30 BTU per cubic feet of enclosure;~~
- (4) Fill a consumer tank or container in excess of 85 percent (85%) of its water capacity, or to fill a tank or container on the premises of a consumer that is not equipped with a fill

- tube or gauge; provided, ~~said the~~ tank or container may be filled by weight if the tank or container is weighed before and after ~~filling; filling.~~
- (5) Disconnect an appliance from a gas supply line without capping or plugging ~~said the~~ line before leaving the ~~premises; premises.~~
 - (6) Turn on the gas after reestablishing an interrupted service without first having checked and closed all gas ~~outlets; outlets.~~
 - (7) ~~Violate any provisions of this Article or any rules and regulations promulgated thereunder.~~ adopted pursuant to this Article.

(b) Every supply tank or container with its regulating equipment connected in a service system, shall be identified while in service by the supplier with an attached tag, ~~label~~ label, or other marking that includes the name of the person supplying liquefied petroleum gas to ~~said the~~ system, and it shall be unlawful for any person, other than ~~said the~~ supplier or the owner of the system, to disconnect, interrupt or fill ~~said the~~ system with liquefied petroleum gas without the consent of ~~said the~~ supplier. ~~Provided, if~~ If another registered supplier is requested by the consumer to connect ~~his~~ service and is given permission by the consumer to do so, the new supplier shall notify the former supplier before disconnecting the former service and connecting the new service and shall cap or plug all disconnected equipment outlets and leave ~~said the~~ equipment in a condition consistent with this Article and the rules ~~and regulations promulgated thereunder.~~ adopted pursuant to this Article."

Section 2. This act is effective when it becomes law and applies to liquefied petroleum gas burning appliances installed on and after that date.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 8:45 p.m. on the 22nd day of July, 1999.

S.B. 799

SESSION LAW 1999-345

CAROLINA BOARD OF PHYSICAL THERAPY EXAMINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-270.33 reads as rewritten:

"§ 90-270.33. *Fees.*

The Board may collect fees established by its rules, but those fees shall not exceed the following schedule for the specified items:

(1) Each application for licensure	\$100.00
<u>\$150.00</u>	
(2) License renewal	40.00
<u>\$120.00</u>	
(3) Transfer/verification/replace certificate	15.00

\$30.00	
(4) Examination retake	30.00
\$60.00	
(5) Late renewal	
\$20.00	
(6) Licensure revival (in addition to renewal)	25.00
\$30.00	
(7) Directory	5.00
\$10.00	
(8) Licensee lists <u>lists or labels</u>	
60.00	

In all instances where the Board uses the services of a national testing service for preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services, in addition to its other fees."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 8:47 p.m. on the 22nd day of July, 1999.

H.B. 1479

SESSION LAW 1999-346

AN ACT TO AMEND THE NEWSPRINT RECYCLING TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-102.6 reads as rewritten:

"§ 105-102.6. (Effective July 1, 1999) *Publishers of newsprint publications.*

(a) Purpose. -- The purpose of this section is to provide incentives for the recycling of newsprint and magazines and for the use of newsprint that contains recycled content.

(b) Definitions. -- The following definitions apply in this section:

(1) Gross tonnage of newsprint consumed. -- The weight in metric tons of all newsprint consumed by a publisher.

(2) Newsprint. -- Uncoated paper, whether supercalendered or machine finished, made primarily from mechanical wood pulp combined with some chemical wood pulp, weighing between 24.5 and 35 pounds for 500 sheets of paper two feet by three feet in size, and having a brightness of less than 60.

(2a) Nonvirgin newsprint. -- Newsprint that contains recycled postconsumer recovered paper.

(3) Postconsumer recovered paper. -- Paper products, generated by a business or consumer, that have served their intended end uses and have been separated or diverted from solid waste.

(4) Publisher. -- A person engaged in the business of producing publications printed on newsprint who acquires and uses newsprint for this business.

(5) Recycled content percentage. -- The percentage by weight of the total gross tonnage of newsprint consumed by the publisher that is recycled postconsumer recovered paper. For example, if a publisher consumes 10 tons of virgin newsprint, 10 tons of nonvirgin newsprint that contains fifty percent (50%) recycled postconsumer recovered paper, and 10 tons of nonvirgin newsprint that contains ten percent (10%) recycled postconsumer recovered paper, the publisher's recycled content percentage is 6/30 or twenty percent (20%).

(6) Recycled content tonnage. -- The weight in metric tons of the total gross tonnage of newsprint consumed by the publisher that is recycled postconsumer recovered paper.

(7) Recycling. -- Any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.

(8) Recycling tonnage. -- The weight in metric tons of newsprint and magazines ~~that is~~ recycled or diverted to recycling by a publisher.

(9) Virgin newsprint. -- Newsprint that does not contain recycled postconsumer recovered paper.

(c) Minimum Recycled Content Percentage. -- The recycled content percentage of newsprint consumed by a publisher shall equal or exceed the following minimum recycled content percentages:

During 1991 and 1992, twelve percent (12%).

During 1993, fifteen percent (15%).

During 1994, twenty percent (20%).

During 1995 and 1996, twenty-five percent (25%).

During 1997 and 1998, thirty percent (30%).

During 1999 ~~and 2000~~, through 2004, thirty-five percent (35%).

After ~~2000~~, 2004, forty percent (40%).

A publisher who has developed and operates or contracts for the operation of a newspaper or magazine recycling program shall receive partial credit toward the recycled content percentage goals established in this subsection on the basis of ~~one-half ton~~ one ton of credit toward its total recycled content tonnage for each ton of recycling tonnage.

(d) Tax. -- Every publisher shall apply for and obtain from the Secretary a newsprint publisher tax reporting number and shall file an annual report with the Secretary by January 31 of each year. The report shall include the following information for the preceding calendar year:

(1) Tonnage of virgin newsprint consumed.

(2) Tonnage of nonvirgin newsprint consumed.

(3) Gross tonnage of newsprint consumed.

(4) Itemized percentages of recycled postconsumer recovered paper contained in tonnage of nonvirgin newsprint consumed.

(5) Recycled content tonnage.

(6) Recycled content percentage.

(7) Recycling tonnage.

In addition, each publisher whose recycled content percentage for a calendar year is less than the applicable minimum recycled content

percentage provided in subsection (c) shall pay a tax of fifteen dollars (\$15.00) on each ton by which the publisher's recycled content tonnage falls short of the tonnage of recycled postconsumer recovered paper needed to achieve the applicable minimum recycled content percentage provided in subsection (c). This tax is due when the report is filed. No county or city may impose a license tax on the business taxed under this section.

(e) Exemption. -- The tax levied in this section does not apply to an amount calculated pursuant to subsection (d) to the extent the amount is attributable solely to the publisher's inability to obtain sufficient recycled content newsprint because (i) recycled content newsprint was not available at a price comparable to the price of virgin newsprint; (ii) recycled content newsprint of a quality comparable to virgin newsprint was not available; or (iii) recycled content newsprint was not available within a reasonable period of time during the reporting period. In order to claim the exemption provided in this subsection, a publisher must certify to the Secretary:

(1) The amount of virgin newsprint consumed by the publisher during the reporting period solely for one of the reasons listed above.

(2) That the publisher attempted to obtain recycled content newsprint from every manufacturer of recycled content newsprint that offered to sell recycled content newsprint to the publisher within the preceding calendar year.

(3) The name, address, and telephone number of each recycled content newsprint manufacturer contacted, including the company name and the name of the company's individual representative or employee.

(f) Use of Proceeds. -- The Secretary shall, on or before April 15 of each year, credit the net proceeds of the tax imposed by this section to the Solid Waste Management Trust Fund created in G.S. 130A-309.12."

Section 2. This act becomes effective July 1, 1999.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 8:52 p.m. on the 22nd day of July, 1999.

H.B. 253

SESSION LAW 1999-347

AN ACT TO CHANGE THE NAME OF THE STATE INFORMATION PROCESSING SERVICES TO THE DIVISION OF INFORMATION TECHNOLOGY SERVICES AND TO REQUIRE THAT CERTAIN STATE AGENCY INFORMATION TECHNOLOGY PROJECTS MUST BE CERTIFIED BY THE INFORMATION RESOURCE MANAGEMENT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The name of the State Information Processing Services of the Department of Commerce is changed to the Division of Information Technology Services.

Section 2. G.S. 143B-472.44 reads as rewritten:

"§ 143B-472.44. ~~State Information Processing Services.~~ Division of Information Technology Services.

With respect to all executive departments and agencies of State government, except the Department of Justice and The University of North Carolina, the Department of Commerce shall have the following powers and duties:

- (1) To establish and operate information resource centers and services to serve two or more departments on a cost-sharing basis, if the Information Resources Management Commission decides it is advisable from the standpoint of efficiency and economy to establish these centers and services;
- (2) With the approval of the Information Resources Management Commission, to charge each department for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services;
- (3) With the approval of the Information Resources Management Commission, to require any department served to transfer to the Department of Commerce ownership, custody, or control of information processing equipment, supplies, and positions required by the shared centers and services;
- (4) With the approval of the Information Resources Management Commission, to adopt reasonable rules for the efficient and economical management and operation of the shared centers, services, and the integrated State telecommunications network;
- (5) With the approval of the Information Resources Management Commission, to adopt plans, policies, procedures, and rules for the acquisition, management, and use of information technology resources in the departments affected by this subdivision to facilitate more efficient and economic use of information technology in these departments; ~~and~~
- (6) To develop and promote training programs to efficiently implement, use, and manage information technology ~~resources.~~ resources; and
- (7) To provide cities, counties, and other local governmental units with access to ~~State Information Processing Services~~ Division of Information Technology Services information resource centers and services as authorized in this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

The Department of Revenue is authorized to deviate from this subsection's requirements that departments or agencies consolidate information processing functions on equipment owned, controlled or under custody of the ~~State Information Processing Services.~~ Division

of Information Technology Services. All deviations from this subsection's requirements shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission and shall be consistent with available funding. The Department of Revenue is authorized to adopt and shall adopt plans, policies, procedures, requirements and rules for the acquisition, management, and use of information processing equipment, information processing programs, data communications capabilities, and information systems personnel in the Department of Revenue. If the plans, policies, procedures, requirements, rules, or standards adopted by the Department of Revenue deviate from the policies, procedures, or guidelines adopted by the ~~State Information Processing Services~~ Division of Information Technology Services or the Information Resources Management Commission, those deviations shall be allowed and shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission. The Department of Revenue and the ~~State Information Processing Services~~ Division of Information Technology Services shall develop data communications capabilities between the two computer centers utilizing the North Carolina Integrated Network, subject to a security review by the Secretary of Revenue.

The Department of Revenue shall prepare a plan to allow for substantial recovery and operation of major, critical computer applications. The plan shall include the names of the computer programs, databases, and data communications capabilities, identify the maximum amount of outage that can occur prior to the initiation of the plan and resumption of operation. The plan shall be consistent with commonly accepted practices for disaster recovery in the information processing industry. The plan shall be tested as soon as practical, but not later than six months, after the establishment of the Department of Revenue information processing capability.

No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information resource center or network established under this subdivision until safeguards for the data's security satisfactory to the department head and the Secretary of Commerce have been designed and installed and are fully operational. Nothing in this subsection may be construed to prescribe what programs to satisfy a department's objectives are to be undertaken, nor to remove from the control and administration of the departments the responsibility for program efforts, regardless whether these efforts are specifically required by statute or are administered under the general program authority and responsibility of the department. This subdivision does not affect the provisions of G.S. 147-64.6, 147-64.7, or 143B-472.42(1). Notwithstanding any other provision of law, the Department of Commerce shall provide information technology services on a cost-sharing basis to the General Assembly and its agencies as requested by the Legislative Services Commission."

Section 3. G.S. 143B-472.41(8) reads as rewritten:

"(8) The Chair of the ~~State Information Processing Services Division of Information Technology Services~~ Advisory Board."

Section 4. G.S. 143B-472.42(1) reads as rewritten:

"(1) With respect to State agencies, exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of these agencies. In discharging that responsibility the Secretary of Commerce may in cooperation with affected State agency heads, do such of the following things as the Secretary of Commerce deems necessary and advisable:

- a. Provide for the establishment, management, and operation, through either State ownership or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:
 1. Central telephone systems and telephone networks;
 2. Teleprocessing systems;
 3. Teletype and facsimile services;
 4. Satellite services;
 5. Closed-circuit TV systems;
 6. Two-way radio systems;
 7. Microwave systems;
 8. Related systems based on telecommunication technologies.
- b. With the approval of the Information Technology Council, coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item "a." of this subdivision.
- c. Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.
- d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item "a." of this subdivision.
- e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.
- f. Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.
- g. Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property

acquisition, disposition, or construction for telecommunications systems requirements.

- h. Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.
- i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.
- j. Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.
- k. Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the State Information Processing Services Division of Information Technology Services training to users within State agencies in telecommunications technology and systems.
- l. Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.
- m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision.

The provisions of this subdivision shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department."

Section 5. G.S. 143B-472.41(b) reads as rewritten:

"(b) Powers and Duties. -- The Commission has the following powers and duties:

- (1) To develop, approve, and publish a statewide information technology strategy covering the current and following biennium that shall be updated annually and shall be submitted to the General Assembly on the first day of each regular session.
- (2) To develop, approve, and sponsor statewide technology initiatives and to report on those initiatives in the annual update of the statewide information technology strategy.

- (3) To review and approve biennially the information technology plans of the executive agencies and to review and comment biennially on the information technology plans of the Administrative Office of the Courts. This review shall include plans for the procurement and use of personal computers and workstations.
- (4) To recommend to the Governor and the Office of State Budget and Management the relative priorities across executive agency information technology plans.
- (4a) To issue certification of any State agency information technology project that requires or is expected to require the expenditure of funds in excess of five hundred thousand dollars (\$500,000), whether the project is undertaken in a single phase or component or in multiple phases or components. The certification shall be issued when the Commission determines that the project complies with Commission policies, standards, and procedures. The Commission shall promptly report each certification to the Office of State Budget and Management, the Office of the State Controller, the Chairs of the Legislative Committees on Information Technology, and the Cochairs of the Joint Legislative Commission on Governmental Operations. No State agency, other than The University of North Carolina or any of its constituent institutions, shall allocate or expend funds in excess of five hundred thousand dollars (\$500,000) on any information technology project without prior certification as required by this subsection. If an agency cannot determine whether a project or series of projects will require certification, the agency shall seek an opinion from the Commission. Upon review, the Commission may determine that a project is exempt from certification and shall advise the agency of its determination.
- (5) To establish a quality assurance policy for all agency information technology projects, information systems training programs, and information systems documentation. If at any time a certified agency information technology project is not in compliance with Commission policies, standards, or procedures, the Commission may suspend project certification and shall report the suspension to the Office of the State Controller, the Office of State Budget and Management, the Chairs of the Legislative Committees on Information Technology, and the Cochairs of the Joint Legislative Commission on Governmental Operations. Upon recommendation of the Commission, the Joint Legislative Commission on Governmental Operations may request the State Budget Office and the State Controller to take appropriate remedial action, up to and including the

suspension of appropriations or the nonrelease of funds to the project.

- (6) To establish and enforce a quality review and expenditure review procedure for major agency information technology projects.
- (7) To review and approve expenditures from appropriations made to the Office of State Budget and Management for the purpose of creating a Computer Reserve Fund.
- (8) To develop and promote a policy and procedures for the fair and competitive procurement of information technology consistent with the rules of the Department of Administration and consistent with published industry standards for open systems that provide agencies with a vendor-neutral operating environment where different information technology hardware, software, and networks operate together easily and reliably."

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 8:55 p.m. on the 22nd day of July, 1999.

S.B. 29

SESSION LAW 1999-348

AN ACT TO REAUTHORIZE THE NORTH CAROLINA BOARD OF COSMETIC ART EXAMINERS TO ADOPT RULES FOR COSMETIC ART SCHOOLS, AND TO AUTHORIZE THE BOARD TO CHARGE APPLICANTS FOR LICENSURE THE ACTUAL COST OF EXAMINATION SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 88B-4(a) is amended by adding a new subdivision to read:

"§ 88B-4. Powers and duties of the Board.

(a) The Board shall have the following powers and duties:

(7a) To adopt rules for cosmetic art schools."

Section 2. G.S. 88B-20(a) reads as rewritten:

"(a) ~~The Board may charge examination fees as follows:~~

(1) Cosmetologist	\$ 20.00
(2) Apprentice	\$ 5.00
(3) Manicurist.....	\$ 15.00
(4) Esthetician.....	\$ 20.00
(5) Teacher	\$ 25.00.

The Board may charge the applicant the actual cost of preparation, administration, and grading of examinations for cosmetologists, apprentices, manicurists, estheticians, or teachers, in addition to its other fees."

Section 3. Section 2 of this act becomes effective September 1, 1999. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law upon approval of the Governor at 8:59 p.m. on the 22nd day of July, 1999.

S.B. 796

SESSION LAW 1999-349

**AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR
GENERAL CONTRACTORS TO OWN REAL PROPERTY AND
TO PURCHASE EQUIPMENT AND LIABILITY INSURANCE.**

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-9.1. Ownership of real property; equipment; liability insurance.

(a) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State as to the acquisition, rental, encumbering, leasing, and sale of real property. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(b) The Board may purchase or rent equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 9:02 p.m. on the 22nd day of July, 1999.

H.B. 1085

SESSION LAW 1999-350

AN ACT TO PERMIT THE USE OF TRANSITWAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-146.2 is amended by adding a new subsection to read:

"(a1) The Department of Transportation may designate one or more travel lanes as a transitway on streets and highways on the State Highway System and cities may designate one or more travel lanes as a transitway on streets on the Municipal Street System. Transitways shall be reserved for public transportation vehicles as determined by the Department of Transportation or the city having jurisdiction over the street or highway. When transitways have been designated, and they have been appropriately marked with signs or other markers, they shall be reserved for privately or publicly operated transportation

vehicles as determined by the Department or the city having jurisdiction."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 9:05 p.m. on the 22nd day of July, 1999.

H.B. 294

SESSION LAW 1999-351

AN ACT TO AMEND THE LAW GOVERNING THE APPLICABILITY OF PREEXISTING CONDITION LIMITATIONS TO CERTAIN TYPES OF HEALTH INSURANCE POLICIES; TO PRESCRIBE STANDARDS FOR DISABILITY INCOME INSURANCE; TO CONFORM NORTH CAROLINA'S 1997 POSTMASTECTOMY RECONSTRUCTIVE SURGERY LAWS TO THE FEDERAL WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998; TO UPDATE THE LAW ON VIATICAL SETTLEMENTS; TO AUTHORIZE THE WRITING OF FAMILY LEAVE CREDIT INSURANCE; TO CLARIFY THAT LOCAL GOVERNMENT INSURANCE RISK POOLS ARE SUBJECT TO INSURANCE LAWS IN CHAPTER 58 ONLY WHEN SPECIFICALLY REFERRED TO IN THOSE LAWS; TO MAKE CONFORMING CHANGES IN THE STATE HEALTH PLAN REIMBURSEMENT FOR PASTORAL COUNSELORS; AND TO MAKE A TECHNICAL CHANGE CONCERNING THE CLAIMS ACKNOWLEDGMENT STATUTE.

The General Assembly of North Carolina enacts:

PART 1. PREEXISTING CONDITIONS FOR SPECIFIED DISEASE AND HOSPITAL INDEMNITY POLICIES.

Section 1. G.S. 58-51-15(h) reads as rewritten:

"(h) Preexisting Condition Exclusion Clarification. -- Sub-subdivision (a)(2)b. of this section does not apply to:

- (1) Policies issued to eligible individuals under G.S. 58-68-60.
- (2) Excepted benefits as described in G.S. 58-68-25(b), G.S. 58-68-25(b)(1), (2), and (4)."

PART 2. DISABILITY INCOME INSURANCE.

Section 2. Article 51 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-51-130. Standards for disability income insurance policies.

(a) Definitions. -- As used in this section:

- (1) 'Disability income insurance policy' or 'policy' means a policy of accident and health insurance that provides payments when the insured is unable to work because of illness, disease, or injury.

- (2) 'Policy' includes the certificates referred to in subsection (b) of this section.

(b) Applicability. -- This section applies to all policies used in this State, including certificates issued under group policies that are used in this State. This section also applies to a certificate issued under a policy issued and delivered to a trust or to an association outside of this State and covering persons residing in this State.

(c) Disclosure Standards. -- Every disability income insurance policy shall include provisions, where applicable, addressing:

- (1) Terms of renewability.
- (2) Initial and subsequent conditions of eligibility.
- (3) Nonduplication of coverage.
- (4) Preexisting conditions.
- (5) Probationary periods.
- (6) Elimination periods.
- (7) Requirements for replacement.
- (8) Recurrent conditions.
- (9) Definitions of terms.

(d) Preexisting Conditions. -- If an insurer does not seek a prospective insured's medical history in the application or enrollment process, the insurer shall not deny a claim for disabilities that commence more than 24 months after the effective date of the insured person's coverage on the grounds the disability is caused by a preexisting condition. A policy shall not define a preexisting condition more restrictively than 'a condition for which medical advice, diagnosis, care, or treatment was received or recommended within the 24-month period immediately preceding the effective date of coverage of the insured person.'

(e) Exceptions. -- Nothing in this section prohibits an insurer from:

- (1) Using an application or enrollment form designed to elicit the medical history of a prospective insured.
- (2) Underwriting based on answers on the form according to the insurer's established standards.
- (3) Contesting the answers in accordance with G.S. 58-51-15(a)(2)a.

(f) Required Provisions. -- Each policy shall include:

- (1) A description of the principal benefits and coverage provided in the policy.
- (2) A statement of the exceptions, reductions, and limitations contained in the policy.
- (3) A statement of the renewal provisions, including any reservation by the insurer of a right to change premiums.

(g) Other Applicable Provisions. -- G.S. 58-51-95(f) applies to individual policies and G.S. 58-51-80(g) applies to group policies.

(h) Other Income Sources. -- If a policy contains a provision that provides for integration of benefits with other income sources, it shall include a definition of what is considered other income sources and a complete description of how benefits will be reduced by other income

sources, if at all. No disability income policy shall provide that the amount of any disability benefit paid to the insured shall be reduced by reason of any cost-of-living increase, designated as such under the federal Social Security Act, if the cost-of-living increase occurs during the period for which benefits are payable."

PART 3. RECONSTRUCTIVE SURGERY CONFORMING CHANGES.

Section 3.1. G.S. 58-51-62 reads as rewritten:

"§ 58-51-62. Coverage for reconstructive breast surgery ~~resulting from~~ following mastectomy.

(a) Every policy or contract of accident and health insurance, and every preferred provider benefit plan under ~~G.S. 58-50-60~~ G.S. 58-50-56 ~~that is issued, renewed, or amended on or after January 1, 1998, and~~ that provides coverage for mastectomy shall provide coverage for reconstructive breast surgery ~~resulting from~~ following a mastectomy. The coverage shall include coverage for all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry ~~when if reconstructive surgery on a diseased breast is performed.~~ performed, as well as coverage for prostheses and physical complications in all stages of mastectomy, including lymphademas. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for reconstructive breast surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician.

(b) As used in this section, the following terms have the meanings indicated:

- (1) "Mastectomy" means the surgical removal of all or part of a breast as a result of breast cancer or breast disease.
- (2) "Reconstructive breast surgery" means surgery performed as a result of a mastectomy to reestablish symmetry between the two breasts, and includes reconstruction of the mastectomy site, creation of a new breast mound, and creation of a new nipple/areolar complex. "Reconstructive breast surgery" also includes augmentation mammoplasty, reduction mammoplasty, and mastopexy of the nondiseased breast.
- (c) A policy, contract, or plan subject to this section shall not:
 - (1) Deny coverage described in subsection (a) of this section on the basis that the coverage is for cosmetic surgery;
 - (2) Deny to a woman eligibility or continued eligibility to enroll or to renew coverage under the terms of the contract, policy, or plan, solely for the purpose of avoiding the requirements of this section;
 - (3) Provide monetary payments or rebates to a woman to encourage her to accept less than the minimum protections available under this section;

- (4) Penalize or otherwise reduce or limit the reimbursement of an attending provider because the provider provided care to an individual participant or beneficiary in accordance with this section; or
- (5) Provide incentives, monetary or otherwise, to an attending provider to induce the provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

(d) Written notice of the availability of the coverage provided by this section shall be delivered to every individual person insured under the policy, contract, or plan upon initial coverage under the policy, contract, or plan and annually thereafter."

Section 3.2. G.S. 58-65-96 reads as rewritten:

"§ 58-65-96. Coverage for reconstructive breast surgery following mastectomy.

(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider benefit plan under G.S. 58-50-56 ~~that is issued, renewed, or amended on or after January 1, 1998,~~ that provides coverage for mastectomy shall provide coverage for reconstructive breast surgery ~~resulting from following~~ a mastectomy. The coverage shall include coverage for all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry ~~when if reconstructive surgery on a diseased breast is performed,~~ performed, as well as coverage for prostheses and physical complications in all stages of mastectomy, including lymphadenomas. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for reconstructive breast surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician.

(b) As used in this section, the following terms have the meanings indicated:

- (1) "Mastectomy" means the surgical removal of all or part of a breast as a result of breast cancer or breast disease.
 - (2) "Reconstructive breast surgery" means surgery performed as a result of a mastectomy to reestablish symmetry between the two breasts, and includes reconstruction of the mastectomy site, creation of a new breast mound, and creation of a new nipple/areolar complex. "Reconstructive breast surgery" also includes augmentation mammoplasty, reduction mammoplasty, and mastopexy of the nondiseased breast.
- (c) A policy, contract, or plan subject to this section shall not:
- (1) Deny coverage described in subsection (a) of this section on the basis that the coverage is for cosmetic surgery;
 - (2) Deny to a woman eligibility or continued eligibility to enroll or to renew coverage under the terms of the contract, policy,

or plan, solely for the purpose of avoiding the requirements of this section;

- (3) Provide monetary payments or rebates to a woman to encourage her to accept less than the minimum protections available under this section;
- (4) Penalize or otherwise reduce or limit the reimbursement of an attending provider because the provider provided care to an individual participant or beneficiary in accordance with this section; or
- (5) Provide incentives, monetary or otherwise, to an attending provider to induce the provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

(d) Written notice of the availability of the coverage provided by this section shall be delivered to every individual person insured under the certificate, contract, or plan upon initial coverage under the certificate, contract, or plan and annually thereafter."

Section 3.3. G.S. 58-67-79 reads as rewritten:

"§ 58-67-79. *Coverage for reconstructive breast surgery following mastectomy.*

(a) Every health care plan written by a health maintenance organization ~~and in force, issued, renewed, or amended on or after January 1, 1998,~~ that is subject to this Article and that provides coverage for mastectomy shall provide coverage for reconstructive breast surgery ~~resulting from~~ following a mastectomy. The coverage shall include coverage for all stages and revisions of reconstructive breast surgery performed on a nondiseased breast to establish symmetry ~~when~~ if reconstructive surgery on a diseased breast is performed, performed, as well as coverage for prostheses and physical complications in all stages of mastectomy, including lymphadenomas. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for reconstructive breast surgery. Reconstruction of the nipple/areolar complex following a mastectomy is covered without regard to the lapse of time between the mastectomy and the reconstruction, subject to the approval of the treating physician.

(b) As used in this section, the following terms have the meanings indicated:

- (1) "Mastectomy" means the surgical removal of all or part of a breast as a result of breast cancer or breast disease.
 - (2) "Reconstructive breast surgery" means surgery performed as a result of a mastectomy to reestablish symmetry between the two breasts, and includes reconstruction of the mastectomy site, creation of a new breast mound, and creation of a new nipple/areolar complex. "Reconstructive breast surgery" also includes augmentation mammoplasty, reduction mammoplasty, and mastopexy of the nondiseased breast.
- (c) A policy, contract, or plan subject to this section shall not:

- (1) Deny coverage described in subsection (a) of this section on the basis that the coverage is for cosmetic surgery;
- (2) Deny to a woman eligibility or continued eligibility to enroll or to renew coverage under the terms of the contract, policy, or plan, solely for the purpose of avoiding the requirements of this section;
- (3) Provide monetary payments or rebates to a woman to encourage her to accept less than the minimum protections available under this section;
- (4) Penalize or otherwise reduce or limit the reimbursement of an attending provider because the provider provided care to an individual participant or beneficiary in accordance with this section; or
- (5) Provide incentives, monetary or otherwise, to an attending provider to induce the provider to provide care to an individual participant or beneficiary in a manner inconsistent with this section.

(d) Written notice of the availability of the coverage provided by this section shall be delivered to every individual person insured under the plan upon enrollment and annually thereafter."

PART 4. VIATICAL SETTLEMENTS.

Section 4. G.S. 58-58-42 reads as rewritten:

"§ 58-58-42. *Viatical settlements.*

(a) Definitions. -- As used in this section:

(1) ~~"Broker" means a person who, for consideration and on behalf of another, offers or advertises the availability of viatical settlements, introduces viators to providers, or offers or attempts to negotiate viatical settlement contracts between a viator and one or more providers; it does not mean an attorney, accountant, or financial planner retained to represent a viator and whose compensation is not paid by a provider.~~

(1a) 'Financing entity' means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, reinsurer, or any person that may be a party to a viatical settlement contract and that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract but whose sole activity related to the transaction is providing funds to effect the viatical settlement and who has an agreement in writing with a licensed viatical settlement provider to act as a participant in a financing transaction.

(1b) 'Financing transaction' means a transaction in which a viatical settlement provider or a financing entity obtains financing for viatical settlement contracts, viaticated policies or interests therein including, without limitation, any secured or unsecured financing, any securitization

transaction, or any securities offering either registered or exempt from registration under federal and State securities law, or any direct purchase of interests in a policy or certificate, if the financing transaction complies with federal and State securities law.

(2) 'Policy' means an individual life insurance policy or a certificate under a group life insurance policy.

(2a) 'Viatical settlement broker' means a person that on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. 'Viatical settlement broker' does not include an attorney, accountant, or financial planner who is retained to represent the viator and whose compensation is paid directly by or at the direction of the viator.

(3) "Provider" means a person who enters into a viatical settlement contract with a viator. "Provider" does not mean:

a. A licensed lending institution that takes an assignment of a policy as collateral for a loan.

b. The issuer of a policy providing accelerated benefits under 11 NCAC 12.1200.

c. A natural person who enters into no more than one agreement in a calendar year for the transfer of a policy for any value less than the expected death benefit.

(4) 'Viatical settlement contract' or 'contract' means a written agreement entered into between a viatical settlement provider and a viator that establishes the terms under which the viatical settlement provider will pay consideration that is less than the expected death benefit of the viator's policy in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of all or a portion of the policy to the viatical settlement provider. A viatical settlement contract also includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy.

(4a) 'Viatical settlement provider' means a person who enters into a viatical settlement contract with a viator. 'Viatical settlement provider' also means a person that obtains financing from a financing entity for the purchase, acquisition, transfer, or other assignment of one or more viatical settlement contracts, viaticated policies, or interests therein, or otherwise sells, assigns, transfers, pledges, hypothecates, or otherwise disposes of one or more viatical settlement contracts, viaticated policies, or interests therein. 'Provider' does not mean:

- a. A licensed lending institution that takes an assignment of a policy as collateral for a loan.
- b. The issuer of a policy providing accelerated benefits.
- c. A natural person who enters into no more than one agreement in a calendar year for the transfer of a policy for any value less than the expected death benefit.
- d. A financing entity (i) whose sole activity related to the transaction is providing funds to effect the viatical settlement provider and (ii) that has a written agreement with a licensed viatical settlement provider to act as a participant in a financing transaction.

(4b) 'Viatical settlement representative' means a person who is an authorized agent of a viatical settlement provider or viatical settlement broker, as applicable, who acts in any manner in the solicitation of a viatical settlement. A viatical settlement representative is deemed to represent only the viatical settlement provider or viatical settlement broker. Viatical settlement representative does not include:

- a. An attorney, accountant, or financial planner or any person exercising a power of attorney granted by a viator.
- b. Any person who is retained to represent a viator and whose compensation is paid by or at the direction of the viator, regardless of whether the viatical settlement is consummated.

(4c) 'Viaticated policy' means a policy that has been acquired by a viatical settlement provider under a viatical settlement contract.

(5) "Viator" means the owner or holder of a policy insuring the life of an individual who has ~~a catastrophic or life-threatening~~ an illness or condition that is catastrophic, life-threatening, or chronic, and who enters into or seeks to enter into a viatical settlement contract.

(a1) Fiduciary Duty. -- Regardless of the manner in which a viatical settlement broker is compensated, a viatical settlement broker represents only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.

(b) Registration. -- No person may act as a ~~provider~~ viatical settlement provider, viatical settlement representative, or viatical settlement broker, or enter into or solicit a contract without first registering with the Commissioner. The applicant shall register on a form prescribed by the Commissioner. The Commissioner may require the applicant to disclose fully the identity of all ~~stockholders~~, stockholders directly or indirectly holding ten percent (10%) or more of the voting securities of the viatical settlement provider, partners, officers, and employees. The Commissioner may refuse registration of any partnership, corporation, or other business entity if not satisfied

that any stockholder directly or indirectly holding ten percent (10%) or more of the voting securities of the viatical settlement provider, officer, employee, ~~stockholder~~, or partner who may materially influence the applicant's conduct meets the standards of this section. Registration of a partnership, corporation, or other business entity authorizes all members, officers, and designated employees to act as viatical settlement providers under the registration; all of those persons must be named in the application and any supplements to the application. Before any registration is complete, the Commissioner shall investigate each applicant and may register the applicant if the Commissioner finds that the applicant:

- (1) Has provided a detailed plan of operation.
- (2) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for.
- (3) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied.
- (4) If a corporation, is incorporated under the laws of this State or is a foreign corporation authorized to transact business in this State.

No registration is complete for any nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the Commissioner or the applicant has filed with the Commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the Commissioner.

(c) Enforcement. -- The Commissioner may issue a cease and desist order upon any viatical settlement provider if the Commissioner finds that:

- (1) There was any misrepresentation in the application for registration;
- (2) The viatical settlement provider has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider;
- (3) The viatical settlement provider demonstrates a pattern of unreasonable payments to policy owners;
- (4) The viatical settlement provider has been convicted of a felony or any misdemeanor of which criminal fraud is an element; or
- (5) The viatical settlement provider has violated a provision of this section.

(d) Approval of Contracts. -- No viatical settlement provider may use any viatical settlement contract in this State unless it has been filed with and approved by the Commissioner. Any contract form filed with the Commissioner is deemed to be approved if it has not been disapproved within 90 days after the filing. The Commissioner shall disapprove a contract form if, in the Commissioner's opinion, any

provision of the contract is unreasonable, contrary to the public interest, or otherwise misleading or unfair to the policy owner.

(e) Reporting Requirements. -- Each viatical settlement provider shall file with the Commissioner on or before March 1 of each year a statement containing the information required by the rules adopted by the Commissioner.

(e1) Identity of Viator. -- Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement representative, viatical settlement broker, insurance company, insurance company agent, insurance broker, information bureau, rating agency or company, or any other person with actual knowledge of viator's identity, shall not disclose that identity to any other person unless the disclosure:

- (1) Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator has provided prior written consent to the disclosure.
- (2) Is provided in response to an investigation by the Commissioner or any other governmental officer or agency.
- (3) Is a term of or condition to the transfer of a viaticated policy by one viatical settlement provider to another viatical settlement provider.

(f) Examination. -- The Commissioner may, when the Commissioner deems it to be reasonably necessary to protect the public interest, examine the business and affairs of any ~~provider~~ viatical settlement provider, representative, or broker, or applicant for registration. The Commissioner may order any ~~provider~~ viatical settlement provider, representative, or broker, or applicant to produce records, books, files, or other information that is necessary to ascertain whether or not the ~~provider~~ viatical settlement provider, representative, or broker, or applicant is acting or has acted in violation of this section or otherwise contrary to the public interest. The ~~provider~~ viatical settlement provider, representative, or broker, or applicant shall pay the expenses incurred in conducting an examination. Names and individual identification data for all viators are confidential and shall not be disclosed by the Commissioner. The viatical settlement provider shall maintain records of all transactions of contracts and make the records available to the Commissioner for inspection during reasonable business hours. A viatical settlement provider shall maintain records of each viatical settlement until five years after the death of the insured.

(g) Disclosure. -- A viatical settlement provider shall disclose the following information to the viator no later than the date the contract is signed by all parties:

- (1) Options other than the contract for a person with a catastrophic or life-threatening illness, including, but not limited to, accelerated benefits offered by the issuer of the policy.

- (2) The fact that some or all of the contract consideration may be taxable, and that assistance should be sought from a personal tax advisor.
- (3) The fact that the contract consideration could be subject to the claims of creditors.
- (4) The fact that receipt of the contract consideration may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements; and that advice should be obtained from the appropriate government agencies.
- (5) The viator's right to rescind a contract ~~within 30 days after the date it is executed by all parties or~~ within 15 days after the receipt of the contract consideration by the viator, ~~whichever is less, as provided~~ viator as provided in subsection (h) of this section.
- (6) The date by which the contract consideration will be available to the viator and the source of the consideration.
- (7) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator and that assistance should be sought from a financial adviser.

(g1) Disclosure Before Contract Execution. -- A viatical settlement provider shall disclose the following information to the viator before the date the viatical settlement contract is signed by all parties:

- (1) The affiliation, if any, between the viatical settlement provider and the issuer of an insurance policy to be viaticated.
- (2) If a policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured, the viator shall be informed of the possible loss of coverage on the other lives and be advised to consult with his or her insurance producer or the company issuing the policy for advice on the proposed viatication.
- (3) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy. The viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy, and the viatical settlement provider's interest in those benefits.

(h) General Rules. -- A viatical settlement provider entering into a contract with a viator shall first obtain:

- (1) A written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence.
- (2) A witnessed document in which the viator (i) consents to the contract, (ii) acknowledges the catastrophic or life-threatening illness, (iii) represents that the viator has a full

and complete understanding of the contract, (iv) represents that the viator has a full and complete understanding of the benefits of the policy, and (v) releases the medical records and acknowledges that the contract has been entered into freely and voluntarily.

All medical information solicited or obtained by any viatical settlement provider is subject to all State laws relating to confidentiality of medical information. All contracts entered into in this State shall contain an unconditional refund provision for at least 30 days after the date of the contract, or 15 days after the receipt of the viatical settlement proceeds, whichever is less.

(i) Contract Consideration. -- Immediately upon receipt from the viator of documents to effect the transfer of the policy, the viatical settlement provider shall direct the contract consideration to an escrow or trust account managed by a trustee or escrow agent in a ~~bank approved by the Commissioner, pending acknowledgment of the transfer by the issuer of the policy.~~ State or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The account shall be managed by a trustee or escrow agent independent of the parties to the contract. The trustee or escrow agent shall transfer the proceeds that are due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer. Failure to tender the viatical settlement contract consideration by the date disclosed to the viator renders the contract null and void.

(j) Authority to Adopt Standards. -- The Commissioner may:

- (1) Adopt rules to implement this section.
- (2) Establish standards for evaluating reasonableness of payments under contracts. This authority includes regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a policy.
- (3) Establish appropriate registration and other regulatory requirements for brokers.
- (4) Repealed by Session Laws 1998-211, s. 32.

(k) Unfair Trade Practices. -- A violation of this section is considered an unfair trade practice under Article 63 of this Chapter."

PART 5. FAMILY LEAVE CREDIT INSURANCE.

Section 5.1.Article 57 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-57-115. Family leave credit insurance standards; policy provisions.

(a) Definitions. -- As used in this section:

- (1) 'Foster child' means a minor (i) over whom a guardian has been appointed by the clerk of superior court of any county in North Carolina; or (ii) the primary or sole custody of whom has been assigned by order of a court of competent jurisdiction.

(2) 'Immediate family member' means a spouse, child (natural, adopted, or foster), or parent of the insured person.

(3) 'Placement in the foster home' means physically residing with the insured person appointed as the guardian or custodian of a foster child or children as long as the insured person has assumed the legal obligation for total or partial support of the foster child or children with the intent that the foster child or children reside with the insured person on more than a temporary or short-term basis.

(b) Coverage. -- Insurers may provide coverage for loss of income because of a voluntary, employer-approved leave of absence granted upon the occurrence of any of the qualifying events in subsection (d) of this section. The insured person shall not be required to meet any federal requirements in order to qualify for benefits provided by this coverage. Benefits shall be paid to the creditor to reduce the insured person's indebtedness.

(c) Eligibility. -- Coverage may be provided or offered to any debtor who has not yet reached his or her 71st birthday and has been working for wages for at least 30 hours per week for the past five consecutive weeks.

(d) Qualifying Events. -- Benefits shall be paid only for the following qualifying events:

(1) An accident involving sickness of, or incapacitation of, an immediate family member that requires the insured person to attend to the family member's needs.

(2) Birth of a child or children of the insured person.

(3) Adoption of a child or children of the insured person.

(4) Placement in the foster home of a foster child or children.

(5) The insured person's principal residence is in a federally declared disaster area.

(6) The insured person is called to active military duty.

(7) The insured person is called to petit or grand jury duty.

(e) Exclusions. -- Coverage shall not contain any exclusions except:

(1) Retirement of the insured person from employment.

(2) Voluntary resignation of the insured person from employment.

(3) Seasonal unemployment of the insured person.

(4) Involuntary unemployment of the insured person.

(5) Disability of the insured person.

(6) Employment termination because of willful or criminal misconduct of the insured person.

(f) Notice. -- The insurer shall send a notice to the insured person at the insured person's home address to inform the insured person that benefits have been paid, including the dates and the amount of payment. The notice shall be sent to the insured person within 60 days after the last day of the benefit period.

(g) Minimum Amounts. -- The minimum monthly benefit amount shall be level for the entire benefit period. The minimum monthly benefit amount shall equal or exceed the minimum monthly payment required by the creditor, plus the premium charge for the coverage attributable to the benefit period.

(h) Miscellaneous Provisions. -- Any waiting period for benefits shall not exceed 30 days. The insured shall provide satisfactory evidence of employer approval of qualified leave. Lump-sum benefits may be paid. Refunds of unearned single premiums shall be equal to the pro rata unearned gross premium.

(i) Rates. -- Premium rates shall be actuarially demonstrated to generate a sixty percent (60%) incurred loss ratio. Joint coverage rates shall be one and two-thirds (1 2/3) times the approved single rate. Rates shall be filed for approval before they can be used.

(j) Reports. -- By March 31 of each year every insurer writing family leave coverage shall file a statistical report of the past calendar year's actuarial experience for that coverage. The report shall demonstrate the actual experience loss ratio for the calendar year and shall include the: number of insureds, total earned premium, total number of incurred claims, total incurred claims, total number of incurred claims for each qualifying event, average monthly benefit per claim for each qualifying event, and premium refunds."

Section 5.2. G.S. 58-57-1 reads as rewritten:

"§ 58-57-1. *Application of Article.*

All credit life insurance, all credit accident and health insurance, all credit property insurance, all credit insurance on credit card balances, all family leave credit insurance, and all credit unemployment insurance written in connection with direct loans, consumer credit installment sale contracts of whatever term permitted by G.S. 25A-33, leases, or other credit transactions shall be subject to the provisions of this Article, except credit insurance written in connection with direct loans of more than 15 years' duration. The provisions of this Article shall be controlling as to such insurance and no other provisions of Articles 1 through 64 of this Chapter shall be applicable unless otherwise specifically provided; nor shall such insurance be subject to the provisions of this Article where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor."

Section 5.3. G.S. 58-57-5 is amended by adding the following new subdivision to read:

"(6a) 'Family leave credit insurance' means insurance on a debtor in connection with a specified loan or other credit transaction to provide payment to a creditor of the debtor for the installment payments or other periodic payments becoming due when the debtor suffers a loss of income because of a voluntary, employer-approved leave of absence for qualifying events specified in G.S. 58-57-115(d)."

PART 6. LOCAL GOVERNMENT RISK POOL CLARIFICATION.

Section 6. Article 23 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-23-45. Relationship to other insurance laws.

Unless local government risk pools are specifically referenced in a particular section of this Chapter, no provisions in this Chapter other than this Article apply to local government risk pools."

PART 7. CONFORMING CHANGES FOR STATE HEALTH PLAN REIMBURSEMENT FOR PASTORAL COUNSELORS.

Section 7. G.S. 135-40.7B(c1) reads as rewritten:

"(c1) Notwithstanding any other provisions of this Part, the following providers and no others may provide necessary care and treatment for chemical dependency under this section:

- (1) The following providers with appropriate substance abuse training and experience in the field of alcohol and other drug abuse as determined by the mental health case manager, in facilities described in subdivision (b)(2) of this section, in day/night programs or outpatient treatment facilities licensed after July 1, 1984, under Article 2 of Chapter 122C of the General Statutes or in North Carolina area programs in substance abuse services are authorized to provide treatment for chemical dependency under this section:
 - a. Licensed physicians including, but not limited to, physicians who are certified in substance abuse by the American Society of Addiction Medicine (ASAM);
 - b. Licensed or certified psychologists;
 - c. Psychiatrists;
 - d. Certified substance abuse counselors working under the direct supervision of such physicians, psychologists, or psychiatrists;
 - e. Psychological associates with a masters degree in psychology working under the direct supervision of such physicians, psychologists, or psychiatrists;
 - f. Nurses working under the direct supervision of such physicians, psychologists, or psychiatrists;
 - g. Certified clinical social workers;
 - h. Certified clinical specialists in psychiatric and mental health nursing;
 - i. Licensed professional counselors; and
 - j. Certified fee-based practicing pastoral ~~counselors until July 1, 1999.~~ counselors.
- (2) The following providers with appropriate substance abuse training and experience in the field of alcohol and other drug abuse as determined by the mental health case manager are authorized to provide treatment for chemical dependency in outpatient practice settings:

- a. Licensed physicians who are certified in substance abuse by the American Society of Addiction Medicine (ASAM);
- b. Licensed or certified psychologists;
- c. Psychiatrists;
- d. Certified substance abuse counselors working under the employment and direct supervision of such physicians, psychologists, or psychiatrists;
- e. Psychological associates with a masters degree in psychology working under the employment and direct supervision of such physicians, psychologists, or psychiatrists;
- f. Nurses working under the employment and direct supervision of such physicians, psychologists, or psychiatrists;
- g. Certified clinical social workers;
- h. Certified clinical specialists in psychiatric and mental health nursing;
- i. Licensed professional counselors;
- j. ~~Licensed~~ Certified fee-based practicing pastoral ~~counselors until July 1, 1999;~~ counselors; and
- k. In the absence of meeting one of the criteria above, the Mental Health Case Manager could consider, on a case-by-case basis, a provider who supplies:
 - 1. Evidence of graduate education in the diagnosis and treatment of chemical dependency, and
 - 2. Supervised work experience in the diagnosis and treatment of chemical dependency (with supervision by an appropriately credentialed provider), and
 - 3. Substantive past and current continuing education in the diagnosis and treatment of chemical dependency commensurate with one's profession.

Provided, however, that nothing in this subsection shall prohibit the Plan from requiring the most cost-effective treatment setting to be utilized by the person undergoing necessary care and treatment for chemical dependency."

PART 8. TECHNICAL CHANGE/CLAIMS SETTLEMENT STATUTE.

Section 8. If ratified Senate Bill 766 (1999 Session) becomes law, then G.S. 58-65-125(c), as enacted by Section 3 of that act, is repealed.

PART 9. EFFECT OF HEADINGS.

Section 9. The headings to the parts of this act are a convenience to the reader and are for reference only. The headings do not expand, limit, or define the text of this act.

PART 10. EFFECTIVE DATE.

Section 10. Sections 2, 4, 5.1, 5.2, and 5.3 of this act become effective October 1, 1999. Section 7 of this act is retroactively effective to June 30, 1999. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 1999.

Became law upon approval of the Governor at 9:07 p.m. on the 22nd day of July, 1999.

H.B. 1267

SESSION LAW 1999-352

AN ACT PROTECTING PUBLIC SCHOOL EMPLOYEES WHO
FILE WRITTEN COMPLAINTS ALLEGING SEXUAL
HARASSMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 22 of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 7. Protection for Reporting Harassment.

"§ 115C-335. Protection against retaliation for reporting harassment.

No employee of a local board of education shall be disciplined in any way solely for the reason that the employee has filed a written complaint alleging sexual harassment by students, other local board employees, or school board members, unless the employee reporting the harassment knows or has reason to believe the report is false."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 1999.

Became law upon approval of the Governor at 9:10 p.m. on the 22nd day of July, 1999.

H.B. 315

SESSION LAW 1999-353

AN ACT TO PROVIDE THAT A MOTOR VEHICLE'S PROPERTY
TAX VALUE IS DETERMINED AS OF JANUARY 1
PRECEDING THE DUE DATE OF THE TAX AND TO
AUTHORIZE THE STOKES BOARD OF EQUALIZATION AND
REVIEW TO MEET AFTER ITS FORMAL ADJOURNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-330.2 reads as rewritten:

"§ 105-330.2. Appraisal, ownership, and situs.

(a) Date Determined. -- The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined as of January 1 of the year the taxes are due. If follows:

- (1) ~~For a vehicle registered under the staggered system, the value shall be determined annually as of January 1 preceding the date a new registration is applied for or the current registration expires.~~

- ~~(2) For a vehicle newly registered under the annual system, the value shall be determined as of January 1 of the year the new registration is obtained. For a vehicle whose registration is renewed under the annual system, the value shall be determined as of January 1 following the date the registration expires.~~

If the value of a new motor vehicle cannot be determined as of ~~the date specified above~~, that date, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State.

The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.

The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed pursuant to G.S. 105-330.3(a)(2). The ownership, situs, and taxability of a classified motor vehicle listed or discovered pursuant to G.S. 105-330.3(a)(2) (unregistered vehicles) shall be determined as of January 1 of the year in which the motor vehicle is required to be listed.

(b) Value; Appeal. -- A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The owner of a classified motor vehicle may appeal the appraised value of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

(c) Administration. -- The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles, shall enter into a memorandum of understanding concerning the vehicle identification information, name and address of the owner, and other information that will be required on the motor vehicle registration forms to implement the tax listing and collection provisions of this Article."

Section 2. G.S. 105-322(e) reads as rewritten:

"(e) Time of Meeting. -- Each year the board of equalization and review shall hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May. In years in which a county does not conduct a real property revaluation, the board shall complete its duties on or before the third Monday following its first

meeting unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. In no event shall the board sit later than July 1 except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. In the year in which a county conducts a real property revaluation, the board shall complete its duties on or before December 1, except that it may sit after that date to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment, the board shall meet at such times as it deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below. Following its adjournment upon completion of its duties under subdivisions (g)(1) and (2) of this section, the board shall continue to meet to carry out the following duties:

- (1) To hear and decide all appeals relating to discovered property under G.S. 105-312(d) and (k).
- (2) To hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b).
- (3) To hear and decide all appeals relating to audits conducted under G.S. 105-296(j) and (l) of property classified at present-use value and property exempted or excluded from taxation."

Section 3. Section 2 of this act applies only to Stokes County.

Section 4. Section 1 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2000. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 1999.

Became law upon approval of the Governor at 9:12 p.m. on the 22nd day of July, 1999.

H.B. 924

SESSION LAW 1999-354

AN ACT TO AUTHORIZE COMMUNITY MEDIATION CENTERS.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-38.5. *Community mediation centers.*

(a) The General Assembly finds that it is in the public interest to encourage the establishment of community mediation centers, also known as dispute settlement centers or dispute resolution centers, to support the work of these centers in facilitating communication, understanding, reconciliation, and settlement of conflicts in communities, courts, and schools, and to promote the widest possible

use of these centers by the courts and law enforcement officials across the State.

(b) Community mediation centers, functioning as or within nonprofit organizations and local governmental entities, may receive referrals from courts, law enforcement agencies, and other public entities for the purpose of facilitating communication, understanding, reconciliation, and settlement of conflicts.

(c) Each chief district court judge and district attorney shall encourage mediation for any criminal district court action pending in the district when the judge and district attorney determine that mediation is an appropriate alternative.

(d) Each chief district court judge shall encourage mediation for any civil district court action pending in the district when the judge determines that mediation is an appropriate alternative."

Section 2. G.S. 84-2.1 reads as rewritten:

"§ 84-2.1. *"Practice law" defined.*

The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition. The phrase "practice law" does not encompass the writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by G.S. 7A-38.5."

Section 3. G.S. 90-330 reads as rewritten:

"§ 90-330. *Definitions; practice of marriage and family therapy.*

(a) Definitions. -- As used in this Article certain terms are defined as follows:

(1) Repealed by Session Laws 1993, c. 514, s. 1.

(1a) The "Board" means the Board of Licensed Professional Counselors.

(2) A "licensed professional counselor" is a person engaged in the practice of counseling who holds a license as a licensed professional counselor issued under the provisions of this Article.

- (3) The "practice of counseling" means holding oneself out to the public as a professional counselor offering counseling services that include, but are not limited to, the following:
- a. Counseling. -- Assisting individuals, groups, and families through the counseling relationship by treating mental disorders and other conditions through the use of a combination of clinical mental health and human development principles, methods, diagnostic procedures, treatment plans, and other psychotherapeutic techniques, to develop an understanding of personal problems, to define goals, and to plan action reflecting the client's interests, abilities, aptitudes, and mental health needs as these are related to personal-social-emotional concerns, educational progress, and occupations and careers.
 - b. Appraisal Activities. -- Administering and interpreting tests for assessment of personal characteristics.
 - c. Consulting. -- Interpreting scientific data and providing guidance and personnel services to individuals, groups, or organizations.
 - d. Referral Activities. -- Identifying problems requiring referral to other specialists.
 - e. Research Activities. -- Designing, conducting, and interpreting research with human subjects.

The "practice of counseling" does not include the facilitation of communication, understanding, reconciliation, and settlement of conflicts by mediators at community mediation centers authorized by G.S. 7A-38.5.

- (4) A "supervisor" means any licensed professional counselor or, when one is inaccessible, an equivalently credentialed mental health professional, as determined by the Board, with a minimum of five years of counseling experience who meets the qualifications established by the Board.

(b) Repealed by Session Laws 1993, c. 514, s. 1.

(c) Practice of Marriage and Family Therapy, Psychology, or Social Work. -- No person licensed as a licensed professional counselor under the provisions of this Article shall be allowed to hold himself or herself out to the public as a certified marriage and family therapist, licensed practicing psychologist, psychological associate, or certified clinical social worker unless specifically authorized by other provisions of law."

Section 4. Chapter 8 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15.

"Mediation Negotiations.

"§ 8-110. Inadmissibility of negotiations.

(a) Evidence of statements made and conduct occurring during mediation at a community mediation center authorized by G.S. 7A-38.5 shall not be subject to discovery and shall be inadmissible in any

proceeding in the action or other actions on the same claim, except in proceedings to enforce a settlement of the action. No such settlement shall be binding unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed during mediation.

(b) No mediator shall be compelled to testify or produce evidence in any civil proceeding concerning statements made and conduct occurring in a mediation conducted by a community mediation center authorized by G.S. 7A-38.5. A civil proceeding includes any civil matter in any administrative agency or the General Court of Justice, including a proceeding to enforce a settlement reached at the mediation. For purposes of this subsection, a mediator is a person assigned by the center to conduct the mediation and any staff person employed by the center to provide supervision of that person. This subsection does not excuse a mediator from the reporting requirements of G.S. 7B-301 or G.S. 108A-102.

(c) Except as provided in this subsection, no mediator shall be compelled to testify or produce evidence in any criminal misdemeanor or felony proceeding concerning statements made and conduct occurring in a mediation conducted at a community mediation center authorized by G.S. 7A-38.5. A judge presiding over the trial of a felony may, however, compel disclosure of any evidence unrelated to the dispute that is the subject of the mediation if it is to be introduced in the trial or disposition of the felony and the judge determines that the introduction of the evidence is necessary to a proper administration of justice, and the evidence may not be obtained from any other source. For purposes of this subsection, a mediator is a person assigned by the center to conduct the mediation and any staff person employed by the center to provide supervision of that person. This subsection does not excuse a mediator from the reporting requirements of G.S. 7B-301 or G.S. 108A-102."

Section 5. G.S. 7A-38.1(l) reads as rewritten:

"(l) Inadmissibility of negotiations. -- Evidence of statements made and conduct occurring in a mediated settlement conference shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same ~~claim.~~ claim, except in proceedings for sanctions or proceedings to enforce a settlement of the action. No such settlement shall be enforceable unless it has been reduced to writing and signed by the parties. ~~However, no~~ No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference.

No mediator shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference in any civil proceeding for any ~~purpose,~~ purpose, including proceedings to enforce a settlement of the action, except to attest to the signing of any such agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of

conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse."

Section 6. G.S. 7A-38.4(k) reads as rewritten:

"(k) Evidence of statements made and conduct occurring in a settlement proceeding conducted pursuant to this section shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same ~~claim.~~ claim, except in proceedings for sanctions or proceedings to enforce a settlement of the action. No such settlement shall be enforceable unless it has been reduced to writing and signed by the parties. ~~However, no~~ No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a settlement proceeding.

No mediator, or other neutral conducting a settlement procedure pursuant to this section, shall be compelled to testify or produce evidence concerning statements made and conduct occurring in a mediated settlement conference or other settlement procedure in any civil proceeding for any ~~purpose,~~ purpose, including proceedings to enforce a settlement of the action, except to attest to the signing of any such agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators, and proceedings to enforce laws concerning juvenile or elder abuse."

Section 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 1999.

Became law upon approval of the Governor at 9:15 p.m. on the 22nd day of July, 1999.

S.B. 1004

SESSION LAW 1999-355

AN ACT REVISING THE PROCEDURE USED BY THE NORTH CAROLINA BOARD FOR LICENSING OF GEOLOGISTS TO ADDRESS COMPLAINTS AND INVESTIGATIONS AND AUTHORIZING THE BOARD TO ASSESS CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89E-17 reads as rewritten:

"§ 89E-17. ~~Complaints.~~ Complaints and investigations.

(a) Any person may file written charges with the Board against any licensee pursuant to rules and regulations adopted by the Board; provided however, such charges or allegations shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the secretary. The Board shall have the authority and shall be under a duty to investigate reasonably all valid complaints.

(b) The Board may appoint, employ, or retain investigators for the purpose of examining or inquiring into any acts committed in this State that may violate the provisions of this Chapter, the Board's code of professional conduct, or the Board's rules. The Board may expend

funds for salaries and fees in connection with an investigation conducted pursuant to this Chapter.

(c) Investigations by the Board shall be confidential until the Board takes disciplinary action against a licensee or corporate registrant. Records, papers, and other documents containing information collected or compiled by the Board, its members, or employees as a result of an investigation, inquiry, or interview conducted pursuant to this Chapter shall not be a public record within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges or notice of hearing in any proceeding conducted by the Board and any records, papers, or other documents containing information collected and compiled by the Board and admitted into evidence in a hearing before the Board shall be a public record."

Section 2. G.S. 89E-19 reads as rewritten:

"§ 89E-19. Disciplinary procedures.

The Board may, consistent with the provisions of Chapter 150B of the General Statutes, refuse to grant or to renew, may suspend, or may revoke the license of any person licensed under this Chapter who has violated the provisions of this Chapter or a rule or regulation of the Board, or who has been convicted of a misdemeanor under this Chapter, or who has been convicted of a felony or who has been found by the Board to have been guilty of gross unprofessional conduct, dishonest practice or incompetence or fraud or deceit in obtaining a license or in aiding or abetting by fraud or deceit another person's obtaining a license.

(a) The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to grant a license to any applicant who does not meet the qualifications required by this Chapter, the Board's code of professional conduct, or the Board's rules, or to any corporate registrant that does not meet such qualifications and the requirements of Chapter 55B of the General Statutes. The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to renew, suspend, or revoke a license or certificate of registration if a licensee or corporate registrant:

- (1) Violates the provisions of this Chapter, the Board's code of professional conduct, the Board's rules, or an order issued by the Board.
- (2) Has been convicted of a misdemeanor under G.S. 89E-22.
- (3) Has been convicted of a felony.
- (4) Engages in gross unprofessional conduct, dishonest practice, or professional incompetence.
- (5) Commits fraud or deceit in obtaining a license or certificate of registration or in assisting another person in obtaining a license or certificate of registration.

(b) If the Board finds that a licensee is professionally incompetent, the Board may require the licensee to take an oral or written examination or to meet other requirements to demonstrate the licensee's fitness to practice geology, and the Board may suspend the

licensee's license until he or she establishes professional competence to the satisfaction of the Board.

(c) In addition to the authority granted in subsections (a) and (b) of this section, the Board may levy a civil penalty not in excess of five thousand dollars (\$5,000) for any licensee or corporate registrant who violates the provisions of this Chapter, the Board's code of professional conduct, the Board's rules, or any order issued by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred. Before assessing a civil penalty, the Board shall consider the following:

- (1) The nature, gravity, and persistence of the violation.
- (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other action taken by the Board.
- (3) Whether the violation was willful.
- (4) Any other factors that tend to mitigate or aggravate the violation.

(d) The Board may bring a civil action in the superior court of the county in which the violation occurred to recover a civil penalty if a licensee or corporate registrant does one of the following:

- (1) Fails to request a hearing on the imposition of a civil penalty and fails to pay the civil penalty within 30 days after being notified that a civil penalty has been imposed.
- (2) Requests and receives a hearing on the imposition of a civil penalty but fails to pay the civil penalty within 30 days after service of a written copy of the Board's decision."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 9:49 p.m. on the 22nd day of July, 1999.

S.B. 7

SESSION LAW 1999-356

AN ACT TO PROVIDE FOR THE POSTING OF DIRECTIONAL SIGNS TO AGRICULTURAL MARKETING AND PROCESSING FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"§ 106-22.5. Agricultural tourism signs.

(a) The Department of Agriculture and Consumer Services shall provide directional signs on major highways at or in reasonable proximity to the nearest interchange or within one mile leading to an agricultural facility that promotes tourism by providing tours and on-site sales or samples of North Carolina agricultural products to area tourists.

(b) An agricultural facility must be open for business at least four days a week, 10 months of the year in order to qualify for the directional signs provided for in this section. The Department shall assess the facility the actual reasonable costs of the sign and its installation."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:50 p.m. on the 22nd day of July, 1999.

S.B. 247

SESSION LAW 1999-357

AN ACT TO WITHDRAW NORTH CAROLINA FROM THE SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT, TO LIMIT THE AUTHORITY OF THE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT AUTHORITY AND TO DIRECT THE RADIATION PROTECTION COMMISSION TO STUDY AND FORMULATE A PLAN FOR LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT.

The General Assembly of North Carolina enacts:

Section 1. In accordance with the provisions of G.S. 104F-1, Article VII, Section (g) of the General Statutes, North Carolina hereby withdraws from membership as a party state in the Southeast Interstate Low-Level Radioactive Waste Management Compact.

Section 2. Chapter 104F of the General Statutes is repealed.

Section 3. Notwithstanding any provision of Chapter 104G of the General Statutes to the contrary, the sole function of the North Carolina Low-Level Radioactive Waste Management Authority shall be to take all necessary actions to complete the process of closure and restoration of the proposed Wake County low-level radioactive waste site, and to finalize all other responsibilities and business of the Authority relating to closure and restoration on or before June 30, 2000.

Section 4. Chapter 104G of the General Statutes is repealed effective July 1, 2000.

Section 5. The North Carolina Radiation Protection Commission is directed to review and study the current and projected availability and adequacy of facilities for the management of low-level radioactive waste produced by North Carolina generators, and to formulate a recommended plan for complying with North Carolina's responsibilities under the Low-Level Radioactive Waste Policy Act of 1980, Pub. L. No. 96-573, 94 Stat. 3347, and the Low-Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. 99-240, 99 Stat. 1842, 42 U.S.C. 202 lb, et seq. The Commission shall report its findings and recommendations to the General Assembly on or before May 15, 2000. No license application for a low-level

radioactive waste facility shall be issued or considered by the Department of Environment and Natural Resources prior to action by the General Assembly establishing a plan for future management of low-level radioactive waste.

Section 6. Sections 1, 2, 3, 5, and 6 of this act are effective when they become law. Section 4 of this act becomes effective July 1, 2000.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 10:15 a.m. on the 26th day of July, 1999.

S.B. 365

SESSION LAW 1999-358

AN ACT TO PROHIBIT DEATH ROW INMATES FROM
CONTACTING THE FAMILIES OF THEIR VICTIMS AND TO
REVISE THE LAW PROVIDING FOR THE ESTABLISHMENT
OF THE DATE FOR EXECUTIONS.

The General Assembly of North Carolina enacts:

Section 1. It shall be the policy of the Department of Correction to prohibit death row inmates from contacting the surviving family members of the victims without the written consent of the family members being contacted. For purposes of this section, the term "contact" includes arranging for a third party to forward communications from the inmate to the surviving family members of the victim.

Section 2. G.S. 15-194 reads as rewritten:

"§ 15-194. *Time for execution.*

In sentencing a capital defendant to a death sentence pursuant to G.S. 15A-2000(b), the sentencing judge need not specify the date and time the execution is to be carried out by the Department of Correction. ~~The warden of the State penitentiary at Raleigh~~ Secretary of Correction shall immediately schedule a date for the execution of the original death sentence not less than 30 days nor more than ~~45~~ 60 days from the date of receiving written notification from the Attorney General of North Carolina or the district attorney who prosecuted the case of any one of the following:

- (1) The United States Supreme Court has filed an opinion upholding the sentence of death following completion of the initial State and federal postconviction proceedings, if any;
- (2) The mandate issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) affirming the capital defendant's death sentence and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;
- (3) The capital defendant, if indigent, failed to timely seek the appointment of counsel pursuant to G.S. 7A-451(c), or

failed to file a timely motion for appropriate relief as required by G.S. 15A-1415(a);

- (4) The superior court denied the capital defendant's motion for appropriate relief, but the capital defendant failed to file a timely petition for writ of certiorari to the Supreme Court of North Carolina pursuant to N.C.R. App. P. 21(f);
- (5) The Supreme Court of North Carolina denied the capital defendant's petition for writ of certiorari pursuant to N.C.R. App. P. 21(f), or, if certiorari was granted, upheld the capital defendant's death sentence, but the capital defendant failed to file a timely petition for writ of certiorari to the United States Supreme Court; or
- (6) Following State postconviction proceedings, if any, the capital defendant failed to file a timely petition for writ of habeas corpus in the appropriate federal district court, or failed to timely appeal or petition an adverse habeas corpus decision to the United States Court of Appeals for the Fourth Circuit or the United States Supreme Court.

The ~~warden~~ Secretary shall send a certified copy of the document fixing the date to the clerk of superior court of the county in which the case was tried or, if venue was changed, in which the defendant was indicted. The certified copy shall be recorded in the minutes of the court. The ~~warden~~ Secretary shall also send certified copies to the capital defendant, the capital defendant's attorney, the district attorney who prosecuted the case, and the Attorney General of North Carolina."

Section 3. This act is effective when it becomes law. Section 2 of this act applies to execution dates scheduled on or after the effective date of this act.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

Became law upon approval of the Governor at 6:00 p.m. on the 4th day of August, 1999.

S.B. 1134

SESSION LAW 1999-359

AN ACT TO MAKE CHANGES TO THE WORK FIRST LAW PERTAINING TO MAINTENANCE OF EFFORT, SUPPORT SERVICES, PAY-FOR-PERFORMANCE FOR TWO-PARENT FAMILIES, AND OTHER AREAS OF WELFARE REFORM.

The General Assembly of North Carolina enacts:

Section 1.(a) Support services under North Carolina's Temporary Assistance for Needy Families (TANF) State Plan shall be available to families whose family income does not exceed two hundred percent (200%) of the federal poverty level. Other services, including pregnancy prevention, child protection, family preservation, job retention, and tracking and follow-up activities, may be provided without regard to income. Work-related services under TANF may be

provided to a noncustodial parent of a minor child whose custodial parent is a TANF recipient, or to a noncustodial parent of a minor child in a child-only case, except that no work-related services shall be provided to the noncustodial parent if the services would limit or reduce Work First assistance to the custodial parent or caretaker and children. In order to be eligible for work-related services under this subsection, the noncustodial parent's family income must be not more than two hundred percent (200%) of the federal poverty level.

Section 1.(b)In order to make it more possible for motivated persons to move to higher levels of economic self-sufficiency, counties are encouraged to advise eligible persons who are interested in pursuing postsecondary education or training of the support services that are available during enrollment in these programs. Counties should encourage eligible persons to consider postsecondary education or training programs that are designed to increase earning potential and enhance career advancement opportunities in high-demand and high-growth occupations.

Section 1.1.(a)Funds appropriated in Section 5 of S.L. 1999-237 from the Temporary Assistance to Needy Families (TANF) Block Grant for the fiscal year ending June 30, 2000, for Work First Cash Assistance is changed from one hundred thirty-three million four hundred thirty six thousand eight hundred fifty-five dollars (\$133,436,855) for Standard Counties to one hundred thirty-three million five hundred six thousand eight hundred fifty-five dollars (\$133,506,855) for Standard Counties, and from forty-three million seven hundred eighty-seven thousand one hundred seventy dollars (\$43,787,170) for Electing Counties to thirty-eight million, three hundred seventeen thousand one hundred seventy dollars (\$38,317,170) for Electing Counties.

Section 1.1.(b)There is appropriated from funds made available by subsection (a) of this section to the Department of Health and Human Services, Division of Social Services, from the Temporary Assistance to Needy Families (TANF) Block Grant for the 1999-2000 fiscal year the sum of five million four hundred thousand dollars (\$5,400,000). These funds shall be used to make grants to pilot programs developed in collaboration with the Employment Security Commission, business entities, faith communities, educational institutions, law enforcement agencies, community organizations, and other human services agencies. These pilot programs shall be designed to address problems of families with significant employment barriers to economic self-sufficiency and to reduce or prevent intergenerational poverty. The pilot programs shall target one or more of the following outcomes:

- (1) To improve work advancement, job training, and wage improvement of noncustodial parents and to promote responsible fatherhood.
- (2) To involve preschool aged children in programs designed to develop and enhance science-based cognitive development activities and to expand access to such programs.

- (3) To track and work with families that have returned to receiving public assistance after having left public assistance due to employment.
- (4) To assist recipients in creating safe neighborhood environments by eliminating criminal activity and other dangers to child and family safety and well-being.
- (5) To identify and assist homeless families in moving from poverty to self-sufficiency.
- (6) To involve children in programs, such as peer mediation, nonviolent conflict resolution, and community service, that teach self-discipline and responsibility and that provide positive motivation.
- (7) To identify families that have been sanctioned under TANF and to provide programs and services designed to eliminate barriers to compliance.
- (8) To assist families with special problems such as language barriers.

Grants for pilot programs under this subsection shall be made by the Department of Health and Human Services. Any local or State governmental agency or nonprofit, tax-exempt organization may apply for funds under this subsection. All grant proposals shall contain specific goals and objectives and an evaluation mechanism with which progress towards attaining these goals and objectives can be measured. All grant proposals shall provide evidence of collaboration between agencies in developing or administering the program or both. All pilot programs under this subsection shall be required to report on the program to the Department of Health and Human Services.

The Secretary of the Department of Health and Human Services shall, in consultation with the Employment Security Commission, the Department of Public Instruction, the Office of Juvenile Justice, the local departments of social services, advocacy organizations, and other human services agencies, establish a set of guidelines for reviewing, evaluating, and awarding the grants. The Department of Health and Human Services shall make progress reports to the Joint Legislative Public Assistance Commission, the Senate Appropriations Committee on Human Resources, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division at least quarterly, beginning no later than December 1, 1999.

Section 1.2.(a) G.S. 108A-27.2(2) reads as rewritten:

"The Department shall have the following general duties with respect to the Work First Program:

- (2) Describe authorized federal and State work ~~activities;~~ activities. For up to twenty percent (20%) of Work First recipients, authorized State work activities shall include at least part-time enrollment in a postsecondary education program. In Standard Counties, recipients enrolled on at least a part-time basis in a postsecondary education program

and maintaining a 2.5 grade point average or its equivalent shall have their two-year time limit suspended for up to three years."

Section 1.2.(b) G.S. 108A-27.9(c)(4) reads as rewritten:

"(c) The State Plan shall include the following generally applicable provisions:

- (4) A description of eligible federal and State work activities; activities. For up to twenty percent (20%) of Work First recipients, authorized State work activities shall include at least part-time enrollment in a postsecondary education program. In Standard Counties, recipients enrolled on at least a part-time basis in a postsecondary education program and maintaining a 2.5 grade point average or its equivalent shall have their two-year time limit suspended for up to three years."

Section 2.(a) G.S. 108A-27.2(9) reads as rewritten:

"The Department shall have the following general duties with respect to the Work First Program:

- (9) Develop and implement a system to monitor and evaluate the impact of the Work First Program on children and families, including the impact of the Work First Program on ~~the economic security and health of children and families, job retention and advancement,~~ child abuse and neglect, caseloads for child protective services and foster care, school attendance, and academic and behavioral performance, performance, and other measures of the economic security and health of children and families. The system should be developed to allow monitoring and evaluation of impact based on both aggregated and disaggregated data. State and county agencies shall cooperate in providing information needed to conduct these evaluations, sharing data and information except where prohibited specifically by federal law or regulation;".

Section 2.(b) G.S. 108A-27.2 is amended by adding the following new subdivision to read:

"The Department shall have the following general duties with respect to the Work First Program:

- (1c) Ensure that two-parent families receive cash assistance for three months after qualifying for assistance without being subject to pay for performance requirements, in order to encourage families to stay together and to overcome barriers to self-sufficiency and gainful employment. Cash assistance or diversion assistance received prior to being subject to pay for performance requirements is limited to one time within a 12-month period."

Section 2.(c) G.S. 108A-27.9(c) is amended by adding the following new subdivision to read:

"(c) The State Plan shall include the following generally applicable provisions:

- (1c) Provisions to ensure that two-parent families receive cash assistance for three months after qualifying for assistance without being subject to pay for performance requirements, in order to encourage families to stay together and to overcome barriers to self-sufficiency and gainful employment. Cash assistance or diversion assistance received prior to being subject to pay for performance requirements is limited to one time within a 12-month period."

Section 3. G.S. 108A-27.11 reads as rewritten:

"§ 108A-27.11. *Work First Program funding.*

(a) County block grants, except funds for Work First Family Assistance, shall be computed based on the percentage of each county's total AFDC (including AFDC-EA) and JOBS expenditures, except expenditures for cash assistance, to statewide actual expenditures for those programs in fiscal year 1995-96. The resulting percentage shall be applied to the State's total certified budget enacted by the General Assembly for each fiscal year, ~~except funds budgeted for Work First Family Assistance, for Work First Program expenditures at the county level,~~ for State funds budgeted for State and county demonstration projects authorized by the General Assembly and for Work First Family Assistance payments.

(b) The following shall apply to funding for Standard Program Counties:

- (1) The Department shall make payments of Work First Family Assistance and Work First Diversion Assistance subject to the availability of federal, State, and county funds.
- (2) The Department shall reimburse counties for county expenditures under the Work First Program subject to the availability of federal, State, and county funds.

(c) Each Electing County's allocation for Work First Family Assistance shall be computed based on the percentage of each Electing County's total expenditures for cash assistance to statewide actual expenditures for cash assistance in 1995-96. The resulting percentage shall be applied to the federal TANF block grant funds appropriated for cash assistance by the General Assembly each fiscal year. The Department shall transmit the federal funds contained in the county block grants to Electing Counties as soon as practicable after they become available to the State and in accordance with federal cash management laws and regulations. The Department shall transmit one-fourth of the State funds contained in county block grants to Electing Counties at the beginning of each quarter. Once paid, the county block grant funds shall not revert."

Section 4.(a) G.S. 108A-27.12 reads as rewritten:

"§ 108A-27.12. Maintenance of effort.

(a) ~~The Department shall define in the State Plan or by rule the term "maintenance of effort" based on that term as defined in Title IV-A and shall provide to counties a list of activities that qualify for federal maintenance of effort requirements.~~ the services that can be provided with TANF federal funds and with State and county maintenance of effort funds. The Department shall work with counties to allow flexibility in the spending of county, State, and federal funds so as to maximize the use of resources while assuring that federal maintenance of effort requirements are met.

(b) ~~If a county fails to comply with the maintenance of effort requirement in subsection (a) of this section, the Director of the Budget may withhold State moneys appropriated to the county pursuant to G.S. 108A-93. Counties that fail to meet maintenance of effort requirements and that fail to meet the performance indicators for reducing maintenance of effort shall submit a corrective action plan to the Department and shall be subject to G.S. 108A-27.14. The Department may reduce block grant allocations to counties that fail to meet maintenance of effort requirements and performance indicators or may use some of the county's block grant allocation to secure needed services for clients in that county. If a county fails to comply with maintenance of effort requirements, the Director of the Budget may also withhold State funds appropriated to the county pursuant to G.S. 108A-93.~~

(c) ~~The Department shall maintain the State's maintenance of effort at one hundred percent (100%) of the State certified budget enacted by the General Assembly for programs under this Part during fiscal year 1996-97. At no time shall the Department reduce or reallocate State or county funds previously obligated or appropriated for Work First County Block Grants or child welfare services.~~

(d) ~~For Standard Program Counties, using the 1996-97 fiscal year as the base year, counties shall maintain a financial commitment to the Work First Program equal to the proportion of State funds allocated to the Work First Program. At no time shall a Standard Program County reduce State or county funds previously obligated or appropriated for child welfare services. Each standard county shall maintain funding in Work First, child welfare, and related activities as defined by the Department at one hundred percent (100%) of the county funds budgeted in State Fiscal Year 1996-97 for AFDC Administration, JOBS employment and training, and AFDC Emergency Assistance (cash and services). A county may request to reduce its block grant and maintenance of effort if that county can demonstrate that it is meeting all the needs of its clients, as defined by the Department's performance indicators, without spending all of the block grant funds. The needs of clients include child protection, employment services, and related supportive services such as child care. The Department may reallocate any State or federal funds released from a county that reduced its maintenance of effort or from counties not spending their block grants. Funds reallocated to counties will require county match.~~

(e) During the first year a county operates as an Electing County, the county's maintenance of effort shall be no less than ninety percent (90%) of the amount the county budgeted for programs under this Part during fiscal year 1996-97. If during the first year of operation as Electing the Electing County achieves one hundred percent (100%) of its goals as set forth in its Electing County Plan, then the Electing County may reduce its maintenance of effort to eighty percent (80%) of the amount the county budgeted for programs under this Part during fiscal year 1996-97 for the second year of the Electing County's operation and for all years thereafter that the county maintains Electing Status.

(f) The Department may realign funds if the realignment will assure that maintenance of effort requirements are met while maximizing federal revenues."

Section 4.(b) Notwithstanding G.S. 108A-27.12(e), during the 1999-2000 fiscal year, Electing Counties maintenance of effort shall be no less than ninety percent (90%) of the amount the county budgeted for programs under this Part during fiscal year 1996-97. If during the 1999-2000 fiscal year the Electing County achieves one hundred percent (100%) of its goals as set forth in its Electing County Plan, then the Electing County may reduce its maintenance of effort to eighty percent (80%) of the amount the county budgeted for programs under this Part during fiscal year 1996-97 for the next year of the Electing County's operation and for all years thereafter that the county maintains Electing Status. This subsection does not apply to any electing county that achieved one hundred percent (100%) of its goals as set forth in its Electing County Plan during the 1998-99 fiscal year.

Section 4.(c) The Department of Health and Human Services shall report quarterly on the extent to which the State and counties are meeting federal maintenance of effort requirements under Temporary Assistance for Needy Families and on any realignment of funds. The Department and the counties shall work together to maximize full achievement of the State and county maintenance of effort. The Department shall make its report to members of the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Human Resources, and the Joint Legislative Public Assistance Committee, and to the Fiscal Research Division.

Section 4.(d) The Department shall continue to work with counties, area mental health authorities, and other public and private entities or partnerships that provide services to Temporary Assistance for Needy Families recipients paid for with State and local funds to identify those services and activities that meet federal maintenance of effort requirements. The Department shall report the status of identifying services and activities in its quarterly report on meeting federal maintenance of effort requirements as required under subsection (c) of this section.

Section 5.(a) G.S. 108A-27.3(a) is amended by adding the following new subdivision to read:

"(a) The duties of the county boards of commissioners in Electing Counties under the Work First Program are as follows:

- (10a) Ensure that all Work First cases are reviewed no later than three months prior to expiration of time limitations for receiving cash assistance to:
- a. Ensure that time limitations on assistance have been computed correctly;
 - b. Ensure that the family is informed in writing about public assistance benefits, including child care, Medicaid, and food stamps, for which the family is eligible even while cash assistance is no longer available;
 - c. Provide for an extension of cash assistance benefits if the family qualifies for an extension; and
 - d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability."

Section 5.(b) G.S. 108A-27.4(e) is amended by adding the following new subdivision to read:

"(e) Each county shall include in its County Plan the following:

- (7) The process by which the county will review all Work First caseloads no later than three months prior to expiration of time limitations for receiving cash assistance to:
- a. Ensure that time limitations on assistance have been computed correctly;
 - b. Ensure that the family is informed in writing about public assistance benefits, including child care, Medicaid, and food stamps, for which the family is eligible even while cash assistance is no longer available;
 - c. Provide for an extension of cash assistance benefits if the family qualifies for an extension; and
 - d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability."

Section 5.(c) G.S. 108A-27.4 is amended by adding the following new subsection to read:

"(h) Electing counties shall have an emergency assistance program for Work First eligible families, as defined in the electing county plan. Counties may establish income eligibility for emergency assistance at or below two hundred percent (200%) of the federal poverty level."

Section 5.(d) G.S. 108A-27.7 is amended by adding the following new subsection to read:

"(d) Standard counties shall have an emergency assistance program for Work First eligible families, as defined in the standard county plan. Counties may establish income eligibility for emergency assistance at or below two hundred percent (200%) of the federal poverty level."

Section 5.(e) G.S. 108A-27.6(a) is amended by adding the following new subdivision to read:

"(a) Except as otherwise provided in this Article, the Standard Work First Program shall be administered by the county departments of social services. The county departments of social services in Standard Program Counties shall:

- (10) Ensure that all Work First cases are reviewed no later than three months prior to expiration of time limitations for receiving cash assistance to:
 - a. Ensure that time limitations on assistance have been computed correctly;
 - b. Ensure that the family is informed about public assistance benefits, including child care, Medicaid, and food stamps, for which the family is eligible even while cash assistance is no longer available;
 - c. Provide for an extension of cash assistance benefits if the family qualifies for an extension; and
 - d. Review family status and assist the family in identifying resources and support the family needs to maintain employment and family stability."

Section 6. G.S. 108A-27.2 is amended by adding the following new subdivision to read:

"The Department shall have the following general duties with respect to the Work First Program:

- (14) Review the county Work First Program of each electing county and recommend whether the county should continue to be designated an electing county or whether it should be redesignated as a standard county. In conducting its review and making its recommendation, the Department shall:
 - a. Examine and consider the results of the Department's monitoring and evaluation of the impact of the electing county's Work First Program as required under subdivision (9) of this section;
 - b. Determine whether the electing county's Work First Program's unique design requires implementation by an electing county or whether the Work First Program could be implemented by a county designated as a standard county;
 - c. Determine whether the electing county's Work First Program and policies are unique and innovative in meeting the purpose of the Work First Program as stated under G.S. 108A-27, and State and federal laws, rules, and regulations, as compared to other standard and electing county Work First programs.

The Department shall make its recommendation and the reasons therefor to the Joint Legislative Public Assistance Commission not later than three months prior to submitting

the State Plan to the Commission for review as required under G.S. 108A-27.9(a)."

Section 7. Cash assistance payments under Work First shall be calculated based on the standard of need that was in effect for the 1997-1998 fiscal year. The Department of Health and Human Services shall make the necessary changes to the Temporary Assistance for Needy Families State Plan to comply with this section.

Section 8. The Department of Health and Human Services and the Department of Transportation shall work together to develop strategies and methods for assisting low-wage workers receiving Work First Assistance in obtaining dependable, ongoing transportation to and from work, child care services, and education activities. The Department of Health and Human Services and the Department of Transportation shall jointly report on the development and implementation of these strategies and methods no later than May 1, 2000. The report shall be made to the Joint Legislative Public Assistance Committee and to members of the House of Representatives Appropriations Subcommittee on Health and Human Services and the Senate Appropriations Committee on Human Resources.

Section 9. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

Became law upon approval of the Governor at 8:00 p.m. on the 4th day of August, 1999.

S.B. 1115

SESSION LAW 1999-360

AN ACT TO PROVIDE FOR WIDELY SHARED PROSPERITY BY AMENDING THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT, BY PROVIDING ADDITIONAL TAX INCENTIVES FOR VARIOUS BUSINESSES, AND BY MAKING RELATED CHANGES.

The General Assembly of North Carolina enacts:

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PART I. BILL LEE ACT CHANGES

Section 1. Section 10.2(3) of Chapter 13 of the 1996 Second Extra Session reads as rewritten:

- "(3) Quality jobs and business expansion tax credits. -- Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The

remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2002, 2006. ~~Article 3B of Chapter 105 of the General Statutes~~ G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of Article 3B of Chapter 105 of the General Statutes is repealed effective for buildings to which federal credits are allocated on or after January 1, 2006."

Section 2. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

"§ 105-129.2. *Definitions.*

The following definitions apply in this Article:

- (1) Air courier services. -- A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.
- (2) Central administrative office. -- ~~Defined~~ Either of the following:
 - a. A corporate, subsidiary, or regional managing office, as defined by NAICS, in the North American Industry Classification System adopted by the United States Office of Management and Budget.
 - b. An auxiliary subdivision of an interstate passenger air carrier engaged primarily in centralized training for the carrier at its hub. For the purpose of this definition, the terms 'interstate passenger air carrier' and 'hub' have the meanings provided in G.S. 105-164.3.
- (3) Cost. -- In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).
- (3a) Customer service center. -- An auxiliary subdivision of a telecommunications or financial services company, as defined by NAICS, that is primarily engaged in providing support services to the company's customers by telephone to support products or services of the company. For the purpose of this definition, a subdivision is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.

- (4) Data processing. -- Any of the following industries, as defined by NAICS: ~~Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~
 - a. Computer systems design and related services.
 - b. Software publishers.
 - c. Software reproducing.
 - d. Data processing services.
 - e. On-line information services.
- (5) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.
- (5a) Electronic mail order house. -- An electronic shopping and mail order house, as defined by NAICS.
- (6) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.
- (7) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.
- (8) Reserved.
- (9) Large investment. -- Defined in G.S. 105-129.4(b1).
- (10) Machinery and equipment. -- Engines, machinery, equipment, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.
- (11) Manufacturing. -- ~~Defined Industries in manufacturing sectors 31 through 33, as defined by NAICS, in the North American Industry Classification System adopted by the United States Office of Management and Budget, but not including quick printing or retail bakeries.~~
- (11a) NAICS. -- The North American Industry Classification System adopted by the United States Office of Management and Budget.
- (12) Purchase. -- Defined in section 179 of the Code.
- (13) ~~Warehousing and wholesale trade. -- Defined Warehousing. -- Industries in warehousing and storage subsector 493 as defined by NAICS, in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~
- (14) Wholesale trade. -- Industries in wholesale trade sector 42 as defined by NAICS.

"§ 105-129.3. *Enterprise tier designation.*

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of

the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

- (1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.
- (2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.
- (3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

(b1) Data. -- In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

(d) Exception for Two-County Industrial Park. -- For the purpose of this Article, an eligible two-county industrial park that meets all of the following conditions has the lower enterprise tier designation of the designations of the two counties in which it is located:

- (1) It is located in two contiguous counties, one of which has a lower enterprise tier designation than the other.
- (2) At least one-third of the park is located in the county with the lower tier designation.
- (3) It is owned by the two counties or a joint agency of the counties.
- (4) The county with the lower tier designation contributed at least one-half of the cost of developing the park.

(e) Exceptions for Certain Small Counties. -- The following exceptions to the provisions of this section apply to small counties:

- (1) A county that meets both of the conditions set out below has is designated an enterprise tier one area:
 - a. Its population is less than 10,000.
 - b. More than sixteen percent (16%) of its population is below the federal poverty level according to the most recent federal decennial census.

- (2) A county that meets both of the conditions set out below has an enterprise tier designation one level below the designation it would otherwise have under subsection (a) of this section:
- a. Its population is less than 50,000.
 - b. More than eighteen percent (18%) of its population is below the federal poverty level according to the most recent federal decennial census.
- (3) A county that has a population of less than 25,000 and that would otherwise be designated an enterprise tier four or five area under this section must be designated an enterprise tier three area.

"§ 105-129.3A. *Development zone designation.*

(a) *Development Zone Defined.* -- A development zone is an area comprised of one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

- (1) It Every census tract and census block group in the zone is located in whole or in part within the primary corporate limits of ~~in~~ a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.
- (2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.
- (3) More than twenty percent (16%) of its population is below the poverty level according to the most recent federal decennial census.
- (4) Every census tract and census block group in the zone meets at least one of the following conditions:
 - a. More than ten percent (10%) of its population is below the poverty level according to the most recent federal decennial census.
 - b. It is immediately adjacent to another census tract or census block group that is in the same zone and has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.
- (5) None of the census tracts or census block groups in the zone is located in another development zone designated by the Secretary of Commerce.

(b) *Designation.* -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. If the applicant is a taxpayer, it must notify each city in which part of the zone is located. A development zone designation is effective for ~~48~~ 24 months following the designation.

(c) *Relationship With Enterprise Tiers.* -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for

investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"§ 105-129.4. Eligibility; forfeiture.

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

- (1) Air courier services.
- (2) Central administrative office that creates at least 40 new jobs.
- (2a) Customer service center located in an enterprise tier one or two area.
- (3) Data processing.
- (3a) Electronic mail order house that creates at least 250 new jobs and is located in an enterprise tier one or two area.
- (4) Manufacturing.
- (5) ~~Warehousing or wholesale trade.~~ Warehousing.
- (6) Wholesale trade.

(a1) Central Administrative Office, New Jobs Defined. -- A central administrative office creates at least 40 new jobs if the taxpayer hires at least 40 additional full-time employees to fill new positions at the office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. An electronic mail order house creates at least 250 new jobs if the taxpayer hires at least 250 additional full-time employees to fill new positions at the house in the two-year period ending on the last day of the taxable year the taxpayer first claims a credit under this Article. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly

wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars (\$150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

(b2) Health Insurance. -- A taxpayer is eligible for a credit for creating jobs or for worker training under this Article if the taxpayer provides health insurance for the positions for which the credit is claimed at the time the taxpayer applies for the credit. A taxpayer is eligible for the other credits under this Article if the taxpayer provides health insurance for all of the full-time positions at the location with respect to which the credit is claimed at the time the taxpayer applies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims an installment or carryforward of a credit allowed under this Article, the taxpayer must provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for the jobs for which the credit was claimed or the full-time jobs at the location with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for

the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining installment or carryforward of the credit.

(b3) Environmental Impact. -- A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer applies for the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by an agency of the Department of Environment and Natural Resources, and has had no final determination of responsibility for any significant administrative, civil, or criminal violation of any program implemented by an agency of the Department of Environment and Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of G.S. 143-215.6B(d). The Secretary of Commerce will provide the Department of Environment and Natural Resources a list of all taxpayers making this certification. The Department of Environment and Natural Resources may conduct random audit checks to verify taxpayers' certifications. The Department of Environment and Natural Resources must notify the Department of Revenue of any taxpayer certifications it determines are not accurate.

(b4) Safety and Health Programs. -- A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer applies for the credit, at the business location with respect to which the credit is claimed, the taxpayer has no outstanding citations under the Occupational Safety and Health Act and has had no serious violation as defined in G.S. 95-127 within the last three years. The Secretary of Commerce will provide the Department of Labor a list of all taxpayers making this certification. The Department of Labor may conduct random audit checks to verify taxpayers' certifications. The Department of Labor must notify the Department of Revenue of any taxpayer certifications it determines are not accurate.

(c) Repealed by Session Laws 1998-55, s. 1.

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed

or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) **Change in Ownership of Business.** -- The sale, merger, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

- (1) The business closed before it was acquired.
- (2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.
- (3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

(f) Development Zone Project Credit. -- Subsections (a) through (b4) of this section do not apply to the credit for development zone projects provided in G.S. 105-129.13.

"§ 105-129.5. Tax election; cap.

(a) **Tax Election.** -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this ~~Chapter and Chapter~~, the income taxes levied in Article 4 of this ~~Chapter~~. ~~The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against Chapter, and the gross premiums tax levied in Article 8B of this Chapter.~~ The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) **Cap.** -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of a credit with respect to a large investment may be carried forward for the succeeding 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"§ 105-129.6. Application; reports.

(a) **Application.** -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable,

with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. In addition, the application must state the number of full-time jobs to be created that are located within a development zone, the number of full-time jobs to be created that are expected to be filled by employees residing within the development zone, and the number of full-time jobs to be created that are expected to be filled by employees residing within a census tract or census block group that has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee ~~of seventy-five dollars (\$75.00). Fees collected under this subsection are receipts of the Department of Commerce.~~ of five hundred dollars (\$500.00) for each credit the taxpayer intends to claim with respect to a location that is in an enterprise tier three, four, or five area, subject to a maximum fee of one thousand five hundred dollars (\$1,500) per taxpayer per taxable year. If the taxpayer applies for certification for a credit that relates to locations in more than one enterprise tier area, the fee is based on the highest-numbered enterprise tier area.

The Secretary of Commerce shall retain one-fourth of the proceeds of the fee imposed in this section for the costs of administering this section. The Secretary of Commerce shall credit the remaining proceeds of the fee imposed in this section to the Department of Revenue for the costs of administering and auditing the credits allowed in this Article. The proceeds of the fee are receipts of the Department to which they are credited.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of applications for each credit allowed in this Article.

- (2) The number and enterprise tier area of new jobs with respect to which credits were applied for.
- (3) The cost of machinery and equipment with respect to which credits were applied for.
- (4) The number of new jobs created within development zones, and the percentage of those jobs that were filled by residents of the zones.

"§ 105-129.7. Substantiation.

(a) To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(b) Each taxpayer must provide with the tax return qualifying information for each credit claimed under this Article for the first taxable year the credit is claimed and for every year in which a subsequent installment or a carryforward of that credit is claimed. The qualifying information must be in the form prescribed by the Secretary, must cover each taxable year beginning with the first taxable year the credit is claimed, and must be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for an initial credit and any installments and carryforwards, and includes the following:

- (1) The physical location of the jobs and investment with respect to which the credit is claimed, including the enterprise tier designation of the location and whether it is in a development zone. In addition, for each individual who fills a job at a location with respect to which a credit is claimed, the place where the individual resided before taking the job, including any enterprise tier or development zone designation of that place.
- (2) The type of business with respect to which the credit is claimed, as required by G.S. 105-129.4(a), and wage information described in G.S. 105-129.4(b).
- (3) If the credit is claimed with respect to a large investment certified under G.S. 105-129.4(b1), the amount of the investment requirement under that subsection that has been met to date.
- (4) Qualifying information required for the credit for creating jobs allowed under G.S. 105-129.8, the credit for investing in machinery and equipment allowed under G.S. 105-129.9, the credit for worker training allowed under G.S. 105-129.11, the credit for investing in central

administrative office property allowed in G.S. 105-129.12, and any other credits allowed under this Article.

"§ 105-129.8. *Credit for creating jobs.*

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars (\$4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	\$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the

date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

"§ 105-129.9. *Credit for investing in machinery and equipment.*

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places ~~it~~ them in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment ~~is~~ are eligible if ~~it is~~ they are capitalized by the taxpayer for tax purposes under the Code and ~~is~~ not leased to another party. In addition, in the case of a large investment, machinery and equipment that ~~is~~ are not capitalized by the taxpayer ~~is~~ are eligible if the taxpayer leases ~~it~~ them from another party. The credit may not be taken for the taxable year in which the ~~equipment is~~ machinery and equipment are placed in service but shall be taken in equal installments over the seven years following the taxable year in which ~~the equipment is~~ they are placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that ~~is~~ are in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that ~~was~~ were in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the

course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	\$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"§ 105-129.10. *Credit for research and development.*

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section 41(a) of the Code for increasing research activities is allowed a credit equal to five percent

(5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms "qualified research expenses" and "base amount" have the meaning provided in section 41 of the Code. Notwithstanding G.S. 105-228.90(b), as used in this section, the term "Code" means the Internal Revenue Code as enacted as of January 1, 1999.

"§ 105-129.11. Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars (\$1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars (\$500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

- (1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.
- (2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"§ 105-129.12. *Credit for investing in central administrative office property.*

(a) **Credit.** -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars (\$500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) **Mixed Use Property.** -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) **Expiration.** -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

"§ 105-129.13. Credit for development zone projects.

(a) Credit. -- A taxpayer who contributes cash or property to a development zone agency for an improvement project in a development zone is allowed a credit equal to twenty-five percent (25%) of the value of the contribution. A contribution is for an improvement project for the purposes of this section if the agency receiving the contribution contracts in writing to use the contribution for the project and agrees in the contract to repay to the taxpayer, with interest, any part of the contribution not used for the project. The credit may not be taken for the year in which the contribution is made but must be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in this section.

(b) Definitions. -- The following definitions apply in this section:

- (1) Community development corporation. -- A nonprofit corporation that meets all of the following conditions:
 - a. It is chartered pursuant to Chapter 55A of the General Statutes and is tax-exempt pursuant to section 501(c)(3) of the Code.
 - b. Its primary mission is to develop and improve low-income communities and neighborhoods through economic and related development.
 - c. Its activities and decisions are initiated, managed, and controlled by the constituents of those local communities.
 - d. Its primary function is to act as deal maker and packager of projects and activities that will increase its constituency's opportunities to become owners, managers, and producers of small businesses, to obtain affordable housing, and to obtain jobs designed to produce positive cash flow and curb blight in the targeted community.
- (2) Community development purpose. -- A purpose for which a city is authorized to expend funds under G.S. 160A-456, 160A-457, and 160A-457.2.
- (3) Control. -- A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term 'voting security' means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.
- (4) Development zone agency. -- Any of the following agencies that the Department of Commerce certifies will undertake an improvement project in a development zone:

- a. A community-based development organization qualified under 24 C.F.R. § 570.204 to receive community development block grant funds under the Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301, et seq., to carry out a neighborhood revitalization project, a community economic development project, or an energy conservation project.
 - b. A community action agency that has been officially designated as such pursuant to section 210 of the Economic Opportunity Act of 1964, Public Law 88-452, 78 Stat. 508 and which has not lost its designation as a result of a failure to comply with the provisions of that act.
 - c. A community development corporation.
 - d. A community development financial institution certified by the United States Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. § 4701, et seq.
 - e. A community housing development organization qualified under the HOME Investment Partnerships Act, 42 U.S.C. §§ 12701, 12704, and 24 C.F.R. § 92.2.
 - f. A local housing authority created under Article 1 of Chapter 157 of the General Statutes.
- (5) Improvement project. -- A project to construct or improve real property for community development purposes or to acquire real property and convert it for community development purposes. Construction or improvement includes services provided by a development zone agency directly related to the construction or improvement, and project development fees charged by a developer for the construction or improvement.

(c) Certification. -- Before certifying that a development zone agency will undertake an improvement project in a development zone, the Secretary must require the agency to provide sufficient documentation to establish the identity of the agency, the nature of the project, and that the project is for a community development purpose and is located in a development zone. The Secretary of Commerce shall not certify a development zone agency under this section if the agency, any of the agency's officers or directors, or any partner of the agency has ever used any part of a contribution made under this section for any purpose other than an improvement project.

(d) Limitations. -- A taxpayer who claims a credit under this subsection must identify in the application the development zone agencies to which the taxpayer made contributions and the amount contributed to each. No credit is allowed for a contribution if the taxpayer has one of the relationships defined in section 267(b) of the Code with the development zone agency or if the taxpayer controls, is controlled by, or is under common control with an affiliate of the

development zone agency. No credit is allowed to the extent the taxpayer receives anything of value in exchange for the contribution.

(e) Application. -- To be eligible for the tax credit provided in this section, in addition to the application required under G.S. 105-129.6, the taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 of the year following the calendar year in which the contribution was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the contribution was made. An application is effective for the year in which it is timely filed. The application must be on a form prescribed by the Secretary and must include any supporting documentation that the Secretary may require. If a contribution for which a credit is applied for was of property rather than cash, the taxpayer must include with the application a certified appraisal of the value of the property contributed.

(f) Ceiling. -- The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed four million dollars (\$4,000,000). The Secretary of Revenue must calculate the total amount of tax credits claimed from the applications filed under this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds four million dollars (\$4,000,000), the Secretary must allow a portion of the credits claimed by allocating a total of four million dollars (\$4,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary must notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the application was filed. The Secretary's allocations based on applications filed pursuant to this section are final and will not be adjusted to account for credits applied for but not claimed.

(g) Forfeiture. -- A taxpayer forfeits a credit allowed under this section to the extent the development zone agency uses the taxpayer's contribution for any purpose other than an improvement project. Each development zone agency certified by the Department of Commerce must file with the Department of Commerce annual financial statements audited in accordance with generally accepted accounting principles and in accordance with Government Audit Standards developed by the Comptroller General of the United States. The annual statements are required each time the agency receives a contribution eligible for the credit allowed under this section until the entire contribution has been used for improvement projects. If the Department of Commerce determines that a development zone agency has used part or all of a contribution for any purpose other than an improvement project, the Department must notify the Secretary of Revenue of the forfeiture, the taxpayer who made the contribution, and the amount forfeited."

Section 2.1. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- (22) To furnish the Department of Commerce and the Employment Security Commission a copy of the qualifying information required in G.S. 105-129.7(b)."

PART II. SALES TAX CHANGES

Section 3.(a) G.S. 105-164.4(a)(1d)a. through k. are recodified as G.S. 105-164.4A.

Section 3.(b) G.S. 105-164.4(a)(1d), as amended by this section, reads as rewritten:

"(1d) The rate of one percent (1%) applies to the sales price of ~~the following articles.~~ articles listed in G.S. 105-164.4A. The maximum tax is eighty dollars (\$80.00) per article."

Section 3.(c) G.S. 105-164.4A, as recodified by this section, reads as rewritten:

"§ 105-164.4A. Articles taxed at one percent (1%), eighty dollars (\$80.00).

The following articles are taxable under G.S. 105-164.4(a)(1d):

- ~~a.~~(1) Farm machinery. -- Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A "farmer" includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under ~~this section.~~ G.S. 105-164.4.

The term "machines and machinery" as used in this subdivision is defined as follows:

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand, and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

The term shall include all nonvehicular implements and mechanical devices designed and sold for any use defined in this subdivision, which have moving parts, or which require the use of any motor or animal power, fuel, or electricity in their operation but shall not include

nonvehicular implements which have no moving parts and are operated wholly by hand.

The term shall also include metal flues sold for use in curing tobacco, whether such flues are attached to handfired furnaces or used in connection with mechanical burners.

- b-(2) Manufacturing machinery. -- Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term "manufacturing industries and plants" does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.
- c-(3) Telephone company property. -- Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.
- d-(4) Laundry machinery. -- Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.
- e-(5) Freezer plant machinery. -- Sales to freezer locker plants of machinery used in the direct operation of ~~said~~ the freezer locker plant and of parts and accessories thereto.
- f-(6) Broadcasting machinery. -- Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.
- g-(7) Tobacco equipment. -- Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.
- h-(8) Farm storage facilities. -- Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar

apparatus and accessories thereto for the storage of grain, feed or soybeans.

- ~~i~~-(9) Farm containers. -- Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.
- ~~j~~-(10) Recycling facility equipment. -- Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment.
- ~~k~~-(11) (Effective January 1, 2001) Air courier equipment. -- Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 4. G.S. 105-164.14 is amended by adding a new subsection to read:

"(h) Low Enterprise Tier Machinery. -- Eligible taxpayers are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

- (1) Refunds. -- An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.
- (2) Eligibility. -- A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3.
- (3) Machinery and equipment. -- For the purpose of this subsection, the term 'machinery and equipment' means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.4(a). Machinery and equipment are eligible

for the refund provided in this subsection if the taxpayer places them in service in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3, capitalizes them for tax purposes under the Code, and does not lease them to another party."

Section 5.(a) G.S. 105-164.14 is amended by adding a new subsection to read:

"(i) Nonprofit Insurance Companies. -- Eligible nonprofit insurance companies are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

(1) Refunds. -- An eligible nonprofit insurance company is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of its real property, and on computer systems hardware and software it capitalizes for tax purposes under the Code. Liability incurred indirectly by the company for sales and use taxes on these items is considered tax paid by the company. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the insurance company's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. -- An insurance company is eligible for the refund provided in this subsection if it meets all of the following conditions:

a. It is a nonprofit corporation.

b. It is operated for the exclusive purpose of providing insurance and annuity contracts to or for the benefit of organizations exempt from federal income tax under section 501(c)(3) of the Code, and their employees.

c. The Secretary of Commerce has certified that the insurance company will invest at least twenty million dollars (\$20,000,000) in constructing a facility in this State for the conduct of its operations.

(3) Forfeiture. -- If an eligible insurance company does not make the required minimum investment within five years after its first refund under this subsection, it loses its eligibility and forfeits all refunds already received under this subsection. Upon forfeiture, the company is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A company that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236."

Section 5.(b) Effective January 1, 2004, G.S. 105-164.14(i)(1), as enacted by this section, reads as rewritten:

"(i) Nonprofit Insurance Companies. -- Eligible nonprofit insurance companies are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

- (1) Refunds. -- An eligible nonprofit insurance company is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of its real ~~property, and on computer systems hardware and software it capitalizes for tax purposes under the Code.~~ property. Liability incurred indirectly by the company for sales and use taxes on these items is considered tax paid by the company. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the insurance company's fiscal year. Refunds applied for after the due date are barred."

Section 6.(a) G.S. 105-164.3 is amended by adding a new subdivision to read:

"(6e) Interstate passenger air carrier. -- A person whose primary business is scheduled passenger air transportation, as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce."

Section 6.(b) G.S. 105-164.3(6b), as enacted by S.L. 1998-55, becomes effective May 1, 1999.

Section 6.(c) G.S. 105-164.3(6b) reads as rewritten:

"(6b) Hub. -- ~~An interstate air courier's~~ Either of the following:

- a. An interstate air courier's hub is the airport in this State that meets all of the following conditions:
 - ~~a.~~ 1. The air courier has allocated to the airport under G.S. ~~105-388~~ 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.
 - ~~b.~~ 2. The air courier's primary function at the airport is to sort and distribute letters and packages received from multiple consolidation locations.
 - ~~c.~~ 3. The air courier's primary function at the airport is not to consolidate letters and packages and deliver them to another airport for sorting and distribution.
- b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:
 1. The air carrier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.
 2. The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport."

Section 7.(a) Section 9 of S.L. 1998-55 is repealed.

Section 7.(b) G.S. 105-164.13 is amended by adding a new subdivision to read:

"(45) Sales of the following items to an interstate passenger air carrier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 7.(c) Effective January 1, 2001, G.S. 105-164.13(45), as enacted by this act, reads as rewritten:

"(45) Sales of the following items to an interstate passenger air carrier or an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 8. G.S. 105-164.4A, as recodified by this act, is amended by adding a new subdivision to read:

"(12) Flight crew training equipment. -- Sales to an interstate passenger air carrier or an interstate air courier of aircraft simulators for flight crew training for use at the air carrier or air courier's hub."

Section 9. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. -- An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on fuel, lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An 'interstate carrier' is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

- (1) A list identifying the fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.
- (2) The purchase price of the items listed in subdivision (1) of this subsection.
- (3) The sales and use taxes paid in this State on the listed items.
- (4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.
- (5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items

identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

PART III. AFFORDABLE HOUSING TAX CREDIT

Section 10. The title of Article 3B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3B.

"Business Tax ~~Credit~~ Credits."

Section 11. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-129.16A. *Credit for low-income housing.*"

(a) Credit. -- A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to a percentage of the total federal credit allowed with respect to that building. For the purposes of this section, the total federal credit allowed is the total allowed during the 10-year federal credit period plus the disallowed first-year credit allowed in the 11th year. For the purposes of this section, the total federal credit is calculated based on qualified basis as of the end of the first year of the credit period and is not recalculated to reflect subsequent increases in qualified basis. For buildings that meet condition (c)(1) of this section, the credit percentage is seventy-five percent (75%). For other buildings, the credit percentage is twenty-five percent (25%).

(b) Timing. -- The credit must be taken in equal installments over the five years beginning in the first taxable year in which the federal credit is claimed for that building. During the first taxable year in which the credit allowed under this section may be taken with respect to a building, the amount of the installment must be multiplied by the applicable fraction under section 42(f)(2)(A) of the Code. Any reduction in the amount of the first installment as a result of this multiplication is carried forward and may be taken in the first taxable year after the fifth installment is allowed under this section.

(c) Definitions. -- The definitions in section 42 of the Code apply in this section. In addition, as used in this section the term 'qualified North Carolina low-income building' means a qualified low-income building that was allocated a federal credit under section 42(h)(1) of the Code, was not allowed a federal credit under section 42(h)(4) of the Code, and meets any of the following conditions:

- (1) It is located in an area that, at the time the federal credit is allocated to the building, is a tier one or two enterprise area, as defined in G.S. 105-129.3.
- (2) It is located in an area that, at the time the federal credit is allocated to the building, is a tier three or four enterprise area, and forty percent (40%) of its residential units are both

rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of area median gross income as defined in the Code.

- (3) It is located in an area that, at the time the federal credit is allocated to the building, is a tier five enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is thirty-five percent (35%) or less of area median gross income as defined in the Code.

(d) Expiration. -- If, in one of the five years in which an installment of the credit under this section accrues, the taxpayer is no longer eligible for the corresponding federal credit with respect to the same qualified North Carolina low-income building, then the credit under this section expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(e) Forfeiture. -- If the taxpayer is required under section 42(j) of the Code to recapture all or part of a federal credit under that section with respect to a qualified North Carolina low-income building, the taxpayer forfeits the corresponding part of the credit allowed under this section with respect to that qualified North Carolina low-income building. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

Section 12. Reserved.

Section 13. G.S. 105-129.17 reads as rewritten:

"§ 105-129.17. *Tax election; cap.*

(a) Tax Election. -- The ~~credit~~ credits allowed in this Article ~~is~~ are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which ~~the~~ a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of ~~the~~ a credit must be claimed against the same tax.

(b) Cap. -- The ~~credit~~ total credits allowed in this Article may not exceed fifty percent (50%) of the tax against which ~~it is~~ they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the ~~credit~~ credits may be carried forward for the succeeding five years."

Section 14. G.S. 105-129.18 reads as rewritten:

"§ 105-129.18. Substantiation.

To claim the credit credits allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection."

Section 15. G.S. 105-129.19 reads as rewritten:

"§ 105-129.19. Reports.

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

- (1) The number of taxpayers that claimed the credit credits allowed in this Article.
- (2) The cost of business property with respect to which business property credits were claimed.
- (2a) The location of each qualified North Carolina low-income building with respect to which a low-income housing credit was claimed.
- (3) The total cost to the General Fund of the credits claimed."

Section 16. G.S. 105-241.1(e) reads as rewritten:

"(e) Statute of Limitations. -- There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. ~~If~~

~~If a taxpayer forfeits a tax credit pursuant to G.S. 105-163.014 or Article 3A of or tax benefit pursuant to forfeiture provisions of this Chapter, the Secretary must assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells~~

at a gain the taxpayer's principal residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

PART IV. MISCELLANEOUS CHANGES

Section 17. G.S. 143B-437.01(a) reads as rewritten:

"(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

- (1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.
- (1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars (\$100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.
- (2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of five thousand dollars (\$5,000) per new job created up to a maximum of five hundred thousand dollars (\$500,000) per project.

- (3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.
- (4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.
- (5) No project subject to the Environmental Policy Act, Article 1 of Chapter 113A of the General Statutes, shall be funded unless the Secretary of Commerce finds that the proposed project will not have a significant adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that concludes, after consideration of avoidance and mitigation measures, that the proposed project will not have a significant adverse effect on the environment."

Section 17.2. G.S. 130A-310.38 reads as rewritten:

"§ 130A-310.38. *Brownfields Property Reuse Act Implementation Account.*

The Brownfields Property Reuse Act Implementation Account is created as a nonreverting interest-bearing account in the Office of the State Treasurer. The Account shall consist of fees and interest collected under G.S. 130A-310.39, moneys appropriated to it by the General Assembly, moneys received from the federal government, moneys contributed by private organizations, and moneys received from any other source. Funds in the Account shall be used by the Department to defray ~~a portion of~~ the costs of implementing this Part. The Department may contract with a private entity for any services necessary to implement this Part."

Section 17.3. G.S. 130A-310.39 reads as rewritten:

"§ 130A-310.39. *Fees.*

(a) The Department shall collect the following fees:

- (1) A prospective developer who submits a proposed brownfields agreement for review by the Department shall pay a an initial fee of ~~one two~~ thousand dollars (\$1,000), (\$2,000).
- (2) A prospective developer who ~~submits a final report certifying completion of remediation under~~ enters into a brownfields agreement with the Department shall pay a fee of ~~five hundred dollars (\$500.00).~~ in an amount equal to the full cost to the Department and the Department of Justice of all activities related to the brownfields agreement, including but not limited to negotiation of the brownfields agreement, public notice and community involvement, and monitoring the implementation of the brownfields agreement. The procedure by which the amount of this fee is determined shall be established by agreement between the prospective

developer and the Department and shall be set out as a part of the brownfields agreement. The fee imposed by this subdivision shall be paid in two installments. The first installment shall be due at the time the prospective developer and the Department enter into the brownfields agreement and shall equal all costs that have been incurred by the Department and the Department of Justice at that time less the amount of the initial fee paid pursuant to subdivision (1) of this subsection. The Department shall not enter into the brownfields agreement unless the first installment is paid in full when due. The second installment shall be due at the time the prospective developer submits a final report certifying completion of remediation under the brownfields agreement and shall include any additional costs that have been incurred by the Department and the Department of Justice, including all costs of monitoring the implementation of the brownfields agreement.

(b) Fees and interest imposed under this section shall be credited to the Brownfields Property Reuse Act Implementation Account.

(c) If a prospective developer fails to pay the full amount of any fee due under this section, interest on the unpaid portion of the fee shall accrue from the time the fee is due until paid at the rate established by the Secretary of Revenue pursuant to G.S. 105-241.1(i). A lien for the amount of the unpaid fee plus interest shall attach to the real and personal property of the prospective developer and to the brownfields property until the fee and interest is paid. The Department may collect unpaid fees and interest in any manner that a unit of local government may collect delinquent taxes."

Section 18. To the extent feasible, the Department of Commerce shall encourage and support reasonable efforts to develop agreements to reduce the use of excessive tax and economic incentives for interstate competition in luring businesses from one state to another. The Department of Commerce shall also support appropriate and reasonable federal legislation to prohibit or reduce states' use of tax and economic incentives for interstate competition in luring businesses from one state to another. This section does not require the Secretary of Commerce to support actions that will place the State at an economic disadvantage or that are contrary to the economic well-being of the citizens of the State. The Department of Commerce shall report on its progress in these efforts to the Revenue Laws Study Committee by March 1, 2000, and March 1, 2001.

Section 18.1. Section 4 of S.L. 1997-277 reads as rewritten:

"Section 4. (a) The Department of Commerce shall study the effect of the tax incentives provided in the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statutes, on tax equity. This study shall include the following:

- (1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative

measures for more equitable treatment of counties in similar economic circumstances.

- (2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.
- (3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(b) The Department of Commerce shall study the effectiveness of the tax incentives provided in the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statutes. This study shall include:

- (1) Study of the distribution of tax incentives across new and expanding industries.
- (2) Examination of data on economic recruitment for the period 1994 through ~~1998~~ 2000 by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.
- (3) Measuring the direct costs and benefits of the tax incentives.
- (4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(c) The Department of Commerce shall report the results of these studies and its recommendations to the ~~1999~~ 2001 General Assembly by April 1, ~~1999~~, 2001."

PART V. EFFECTIVE DATES

Section 21. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 22. Customer Service Center and Electronic Mail Order House. G.S. 105-129.2(3a) and (5a) and G.S. 105-129.4(a)(2a) and (3a), as enacted by Section 2 of this act, and the amendments to G.S. 105-129.4(a) enacted by Section 2 of this act become effective for taxable years beginning on or after January 1, 2000.

Section 23. NAICS Code and Customer Service Center Changes. -- G.S. 105-129.2(2)b., as enacted by Section 2 of this act, is effective retroactively as of January 1, 1999. Except as provided in Section 22 of this act, the remaining amendments to G.S. 105-129.2 made by Section 2 of this act are effective when this act becomes law.

Section 24. Small County Enhancements. -- G.S. 105-129.3(e), as enacted by Section 2 of this act, becomes effective for taxable years beginning on or after January 1, 2000.

Section 25. Development Zone Definitions. -- The amendments to G.S. 105-129.3A made by Section 2 of this act become effective August 1, 1999, and apply to applications filed on or after that date. Notwithstanding the provisions of G.S. 105-129.3A(b), a development zone designation made in 1998 or 1999 is effective until January 1, 2001.

Section 26. Quality Jobs Assurance. -- G.S. 105-129.4(b2), (b3), and (b4), as enacted by Section 2 of this act, become effective for taxable years beginning on or after January 1, 2000, and apply to credits for which applications are first filed on or after that date.

Section 27. All Credits Against Gross Premiums Tax. -- The amendment to G.S. 105-129.5(a) made by Section 2 of this act is effective for taxable years beginning on or after January 1, 1999.

Section 28. Application Fees and Information. -- The amendments to G.S. 105-129.6(a) and (a1) made by Section 2 of this act are effective 30 days after this act becomes law, and apply to applications filed on or after that date. Section 2.1 of this act and the amendments to G.S. 105-129.7 made by Section 2 of this act become effective January 1, 2000.

Section 29. Development Zone Projects Credit. -- G.S. 105-129.13, as enacted by Section 2 of this act, is effective for taxable years beginning on or after January 1, 2000.

Section 30. Sales Tax Refund for Tiers One and Two Equipment. -- Section 4 of this act becomes effective January 1, 2000, and applies to taxes paid on or after that date.

Section 31. Temporary Sales Tax Refund for Nonprofit Insurance Companies. -- Section 5(a) of this act becomes effective May 1, 1999, and applies to taxes paid on or after that date. Section 5(b) of this act becomes effective January 1, 2004, and applies to taxes paid on or after that date. Section 5 of this act is repealed for taxes paid on or after January 1, 2008.

Section 32. Sales Tax Preferences for Interstate Air Carriers. -- Section 7(c) of this act becomes effective January 1, 2001, and applies to sales made on or after that date. The remainder of Sections 6 through 8 of this act is effective retroactively as of May 1, 1999, and applies to sales made on or after that date. Section 9 of this act becomes effective October 1, 1999.

Section 33. Affordable Housing Credit. -- Part III of this act is effective for taxable years beginning on or after January 1, 2000, and applies to buildings to which federal credits are allocated on or after January 1, 2000.

Section 33.1. Brownfields Property Reuse Act. -- Sections 17.2 and 17.3 of this act are effective when this act becomes law. G.S. 130A-310.39, as amended by Section 17.3 of this act, applies to any proposed brownfields agreement that is submitted to the Department of Environment and Natural Resources for review on or after the date this act becomes law.

Section 35. Remainder. -- The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 8:05 p.m. on the 4th day of August, 1999.

S.B. 170

SESSION LAW 1999-361

AN ACT TO ESTABLISH A LIMIT ON THE TIME A PERSON CAN BE IMPRISONED FOR CIVIL CONTEMPT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 5A-21 reads as rewritten:

"§ 5A-21. *Civil contempt; imprisonment to compel compliance.*

(a) Failure to comply with an order of a court is a continuing civil contempt as long as:

(1) The order remains in force;

(2) The purpose of the order may still be served by compliance with the ~~order~~; and order;

(2a) The noncompliance by the person to whom the order is directed is willful; and

(3) The person to whom the order is directed is able to comply with the order or is able to take reasonable measures that would enable him the person to comply with the order.

(b) A person who is found in civil contempt may be imprisoned as long as his the civil contempt continues, continues, subject to the limitations provided in subsections (b1) and (b2) of this section. Notwithstanding subsection (b2) of this section, if a person is found in civil contempt for failure to pay child support or failure to comply with a court order to perform an act that does not require the payment of a monetary judgment, the person may be imprisoned as long as the civil contempt continues without further hearing.

(b1) A person who is found in civil contempt, unless the contempt is failure by a person but was not arrested for the crime arrested, for failure to comply with a nontestimonial identification order issued pursuant to Article 14, Nontestimonial Identification Order, of Chapter 15A of the General Statutes. In that case, he Statutes may not be imprisoned more than 90 days unless he the person is arrested on probable cause.

(b2) The period of imprisonment for a person found in civil contempt shall not exceed 90 days for the same act of disobedience or refusal to comply with an order of the court. A person who has not purged himself or herself of the contempt within the period of imprisonment imposed by the court under this subsection may be recommitted for one or more successive periods of imprisonment, each not to exceed 90 days. However, the total period of imprisonment for the same act of disobedience or refusal to comply with the order of the court shall not exceed 12 months, including both the initial period of imprisonment imposed under this section and any additional period of imprisonment imposed under this subsection.

Before the court may recommit a person to any additional period of imprisonment under this subsection, the court shall conduct a hearing de novo. The court must enter a finding for or against the alleged contemnor on each of the elements of G.S. 5A-21(a), and must find that all of elements of G.S. 5A-21(a) continue to exist before the person can be recommitted. For purposes of this subsection, a person's failure or refusal to purge himself or herself of contempt shall not be deemed a separate or additional act of disobedience, failure, or refusal to comply with an order of the court.

(c) ~~A person who is found in civil contempt under this Article may, nevertheless, shall not, for the same conduct, be found in criminal contempt under Article 1 of this Chapter, Chapter. but the total period of imprisonment arising from the conduct may not exceed the greater of:~~

~~(1) The period during which the contemnor may be imprisoned for civil contempt; or~~

~~(2) The period of imprisonment provided in G.S. 5A-12(a). "~~

Section 2. G.S. 5A-23(e) reads as rewritten:

"(e) At the conclusion of the hearing, the judicial official must enter a finding for or against the alleged ~~contemnor~~, contemnor on each of the elements set out in G.S. 5A-21(a). If civil contempt is found, the judicial official must enter an order finding the facts constituting contempt and specifying the action which the contemnor must take to purge himself or herself of the contempt."

Section 3. G.S. 5A-12(d) reads as rewritten:

"(d) A person held in criminal contempt under this Article ~~may nevertheless, shall not,~~ for the same conduct, be found in civil contempt under Article 2 of this Chapter, Civil Contempt. ~~If a person is found in both civil contempt and criminal contempt for the same conduct, the total period of imprisonment is limited as provided in G.S. 5A-21(c)."~~

Section 4. G.S. 5A-23(a) reads as rewritten:

"(a) Proceedings for civil contempt are ~~either~~ by motion pursuant to G.S. 5A-23(a1), by the order of a judicial official directing the alleged contemnor to appear at a specified reasonable time and show cause why he should not be held in civil ~~contempt~~ contempt, or by the notice of a judicial official that the alleged contemnor will be held in contempt unless he appears at a specified reasonable time and shows cause why he should not be held in contempt. The order or notice must be given at least five days in advance of the hearing unless good cause is shown. The order or notice may be issued on the motion and sworn statement or affidavit of one with an interest in enforcing the order, including a judge, and a finding by the judicial official of probable cause to believe there is civil contempt."

Section 5. G.S. 5A-23 is amended by adding a new subsection to read:

"(a1) Proceedings for civil contempt may be initiated by motion of an aggrieved party giving notice to the alleged contemnor to appear before the court for a hearing on whether the alleged contemnor

should be held in civil contempt. A copy of the motion and notice must be served on the alleged contemnor at least five days in advance of the hearing unless good cause is shown. The motion must include a sworn statement or affidavit by the aggrieved party setting forth the reasons why the alleged contemnor should be held in civil contempt. The burden of proof in a hearing pursuant to this subsection shall be on the aggrieved party."

Section 6. This act becomes effective December 1, 1999, and applies to all proceedings for civil contempt held on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 8:09 p.m. on the 4th day of August, 1999.

S.B. 297

SESSION LAW 1999-362

AN ACT TO MAKE TECHNICAL AND OTHER CHANGES REGARDING LIMITED PARTNERSHIPS AND THE NORTH CAROLINA REVISED UNIFORM LIMITED PARTNERSHIP ACT, TO CLARIFY THE LIMIT OF LIABILITY IN PROFESSIONAL ORGANIZATIONS, TO PROVIDE FOR THE REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIPS, AND TO REQUIRE ANNUAL REPORTS BY LIMITED LIABILITY PARTNERSHIPS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-79 reads as rewritten:

"§ 1-79. Domestic ~~corporations~~, corporations, limited partnerships, limited liability companies, and registered limited liability partnerships.

(a) For the purpose of suing and being sued the residence of a domestic ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is as follows:

- (1) Where the registered or principal office of the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is located, or
- (2) Where the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership maintains a place of ~~business~~, business, or
- (3) If no registered or principal office is in existence, and no place of business is currently maintained or can reasonably be found, the term 'residence' shall include any place where the ~~corporation~~ corporation, limited partnership, limited liability company, or registered limited liability partnership is regularly engaged in carrying on business.

(b) For purposes of this section, the term 'domestic' when applied to an entity means:

- (1) An entity formed under the laws of this State, or
- (2) An entity that (i) is formed under the laws of any jurisdiction other than this State, and (ii) maintains a

registered office in this State pursuant to a certificate of authority from the Secretary of State."

Section 2. G.S. 55B-9(b) reads as rewritten:

"(b) Liability. -- A shareholder, a director, or an officer of a professional corporation is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for the debts and obligations of debts, obligations, and liabilities of, or chargeable to, the professional corporation arising that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the course of the professional corporation's business by another shareholder, director, or officer, or by a representative of the professional corporation not working under the supervision or direction of the first shareholder, director, or officer at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first shareholder, director, or officer was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other shareholder, director, or officer or by the representative, malfeasance committed by another shareholder, director, or officer or by a representative of the professional corporation; provided, however, nothing in this Chapter shall affect the liability of a shareholder, director, or officer of a professional corporation for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. This subsection does not affect the joint and several liability of a shareholder, a director, or an officer of a professional corporation for any taxes owed by the professional corporation under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes."

Section 3. G.S. 57C-2-01(c) reads as rewritten:

"(c) Subsections (a) and (b) of this section to the contrary notwithstanding and except as set forth in this subsection, a domestic or foreign limited liability company shall engage in rendering professional services only to the extent that a professional corporation acting pursuant to Chapter 55B of the General Statutes or a corporation acting pursuant to Chapter 55 of the General Statutes may engage in rendering professional services under the conditions and limitations imposed by an applicable licensing statute. Chapter 55B of the General Statutes and each applicable licensing statute are deemed amended to provide that professionals licensed under the applicable licensing statute may render professional services through a domestic or foreign limited liability company. For purposes of applying the provisions, conditions, and limitations of Chapter 55B of the General Statutes and the applicable licensing statute to domestic and foreign limited liability companies that engage in rendering professional services, (i) unless the context clearly requires otherwise, references to Chapter 55 of the General Statutes (the North Carolina Business Corporation Act) shall be treated as references to this Chapter, and references to a "corporation" or "foreign corporation" shall be treated

as references to a limited liability company or foreign limited liability company, respectively, (ii) members shall be treated in the same manner as shareholders of a professional corporation, (iii) managers shall be treated in the same manner as directors of a professional corporation, (iv) the persons signing the articles of organization of a limited liability company shall be treated in the same manner as the incorporators of a professional corporation, and (v) the name of a domestic or foreign limited liability company so engaged shall comply with G.S. 57C-2-30 or G.S. 57C-7-06 and, in addition, shall contain the word "Professional" or the abbreviation "P.L.L.C." or "PLLC". For purposes of this subsection, "applicable licensing statute" shall mean those provisions of the General Statutes referred to in G.S. 55B-2(6).

Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, ~~or the standards of professional conduct applicable to the rendering of the services, services, or any~~ This Chapter does not relieve individuals of responsibilities, obligations, or the imposition of sanctions imposed under applicable licensing statutes, even if the sanctions are imposed for the conduct of other members of a limited liability company, statutes. A member or manager of a professional limited liability company is not individually ~~liable for debts and obligations of~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for debts, obligations, and liabilities of, or chargeable to, the professional limited liability company arising that arise from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the course of the professional limited liability company's business by another member or manager or a representative of the professional limited liability company not working under the supervision or direction of the first member or manager at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first member or manager was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other member or manager or representative, by another member, manager, employee, agent, or other representative of the professional limited liability company; provided, however, nothing in this Chapter shall affect the liability of a member or manager of a professional limited liability company for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services."

Section 4. G.S. 59-32 reads as rewritten:
 "§ 59-32. *Definition of terms.*

~~In this Article:~~ As used in this Chapter, except as otherwise defined in Article 5 of this Chapter for purposes of that Article, unless the context otherwise requires:

- (1) 'Bankrupt' ~~includes~~ means bankrupt under the Federal Bankruptcy Act or insolvent under any State insolvent act.
- (2) 'Business' ~~includes~~ means every trade, occupation, or profession.
- (3) 'Conveyance' ~~includes~~ means every assignment, lease, mortgage, or encumbrance.
- (4) 'Court' ~~includes~~ means every court and judge having jurisdiction in the case.
- (4a) 'Foreign limited liability partnership' means a partnership that (i) is formed under laws other than the laws of this State, and (ii) has the status of a limited liability partnership or registered limited liability partnership under those laws.
- (5) 'Person' ~~includes~~ means individuals, partnerships, corporations, limited liability companies, and other associations.
- (6) 'Real property' ~~includes~~ means land and any interest or estate in land.
- (7) 'Registered limited liability partnership' means a partnership that is registered under G.S. 59-84.2 and complies with G.S. 59-84.3."

Section 5. G.S. 59-45 reads as rewritten:

"§ 59-45. *Nature of partner's liability in ordinary partnerships and in registered limited liability partnerships.*

(a) Except as provided by ~~subsection~~ subsections (a1) and (b) of this section, all partners are jointly and severally liable for the acts and obligations of the partnership.

(a1) Except as provided in subsection (b) of this section, a partner in a registered limited liability partnership is not individually liable for debts and obligations of the partnership incurred while it is a registered limited liability partnership solely by reason of being a partner and does not become liable by participating, in whatever capacity, in the management or control of the business of the partnership.

(b) Nothing in this Chapter shall be interpreted to abolish, modify, restrict, limit, or alter the law in this State applicable to the professional relationship and liabilities between the individual furnishing the professional services and the person receiving the professional services, the standards of professional conduct applicable to the rendering of the services, or any responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A partner in a registered limited liability partnership is not individually ~~liable~~ liable, directly or indirectly, including by indemnification, contribution, assessment, or otherwise, for ~~debts and obligations of the debts, obligations, and liabilities of, or chargeable to, the registered limited liability partnership arising that arise~~ from errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another partner or by an employee, agent, or other representative of the partnership; provided, however, nothing in this Chapter shall

affect the liability of a partner of a professional registered limited liability partnership for his or her own errors, omissions, negligence, malpractice, incompetence, or malfeasance committed in the rendering of professional services. committed in the course of the partnership business by another partner or representative of the partnership not working under the supervision or direction of the first partner at the time the errors, omissions, negligence, incompetence, or malfeasance occurred, unless the first partner was directly involved in the specific activity in which the errors, omissions, negligence, incompetence, or malfeasance were committed by the other partner or representative.

(c) Subsection (b) of this section does not affect any of the following:

- (1) The joint and several liability of a partner for debts and obligations of the partnership arising from any cause other than those specified in subsection (b) of this section.
- (2) The joint and several liability of a partner for any taxes owed by the partnership under Chapter 105 of the General Statutes or Article 3 of Chapter 119 of the General Statutes.
- (3) The liability of partnership assets for partnership debts and obligations.

(d) A partner in a registered limited liability partnership is not a proper party to proceedings by or against a limited liability partnership, except where the object of the proceeding is to enforce a partner's right against or liability to the limited liability partnership.

(e) The liability of partners of a registered limited liability partnership formed and existing under this Chapter shall at all times be determined solely and exclusively by this Chapter and the laws of this State.

(f) If a conflict arises between the laws of this State and the laws of any other jurisdiction with regard to the liability of a partner of a registered limited liability partnership formed and existing under this Chapter for the debts, obligations, and liabilities of the registered limited liability partnership, this Chapter and the laws of this State shall govern in determining the liability."

Section 6. Chapter 59 of the General Statutes is amended by adding a new Article 3B to read as follows and to include current G.S. 59-84.2 and G.S. 59-84.3 as the first and second sections in Article 3B:

"ARTICLE 3B.

"Registered Limited Liability Partnerships."

Section 7. G.S. 59-84.2 reads as rewritten:
"§ 59-84.2. Registered limited liability partnerships.

(a) To become a registered limited liability partnership, a partnership must file with the Secretary of State an application ~~stating~~ stating:

- (1) the The name of the partnership, partnership.
- (2) the The street address of its principal office, office.

- (3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process.
- (4) The county in which the registered office is located.
- (5) the number of partners, and a brief statement of the business in which the partnership engages.
- (6) A deferred effective date, if any.
- (7) The fiscal year end of the partnership.

~~A registration as a registered limited liability partnership must be renewed annually.~~

(a) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(b) An application for registration as a registered limited liability partnership must be executed by a majority in interest of the partners or by one or more partners authorized by a majority in interest of the partners.

(c) An application for registration as a registered limited liability partnership or for renewal of a registration must be accompanied by a fee of one hundred twenty-five dollars (\$100.00) ~~(\$125.00).~~

(d) The Secretary of State shall register or renew the registration of a partnership that submits a completed application with the required fee.

(e) A registration is effective for one year after on the later of the date the registration is filed, filed or the date specified in the application for registration, unless it is voluntarily withdrawn before then by filing with the Secretary of State a written withdrawal notice executed by a majority in interest of the partners or by one or more partners authorized by a majority in interest of the partners, of the partners, or is revoked pursuant to G.S. 59-84.4(f).

(f) The Secretary of State may provide forms for applications for registration or renewal of a registration.

(g) The status of a registered limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the application for registration.

(h) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal."

Section 8. G.S. 59-84.3 reads as rewritten:

"§ 59-84.3. *Name of registered limited liability partnerships.*

A registered limited liability partnership's name must contain the words 'registered limited liability partnership' or 'limited liability partnership' or the abbreviation "L.L.P." 'L.L.P.', 'R.L.L.P.', 'LLP' or 'RLLP' as the last words or letters of its name."

Section 9. Article 3B of Chapter 59, as created by Section 6 of this act, is amended by adding a new section to read:

"§ 59-84.4. *Annual report for Secretary of State.*

(a) Each registered limited liability partnership and each foreign limited liability partnership authorized to transact business in this State shall deliver to the Secretary of State for filing an annual report, in a form prescribed by the Secretary of State, that sets forth all of the following:

- (1) The name of the registered limited liability partnership or foreign limited liability partnership and the state or country under whose law it is formed.
- (2) The street address, and the mailing address if different from the street address, of the registered office, the county in which the registered office is located, and the name of its registered agent at that office in this State, and a statement of any change of the registered office or registered agent, or both.
- (3) The street address and telephone number of its principal office.
- (4) A brief description of the nature of its business.
- (5) The fiscal year end of the partnership.

If the information contained in the most recently filed annual report has not changed, a certification to that effect may be made instead of setting forth the information required by subdivisions (2) through (4) of this subsection. The Secretary of State shall make available the form required to file an annual report.

(b) Information in the annual report must be current as of the date the annual report is executed on behalf of the registered limited liability partnership or the foreign limited liability partnership.

(c) The annual report shall be delivered to the Secretary of State by the fifteenth day of the fourth month following the close of the registered or foreign limited liability partnership's fiscal year. The annual report must be accompanied by a fee of two hundred dollars (\$200.00).

(d) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting registered or foreign limited liability partnership in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within 30 days after the effective date of notice, it is deemed to be timely filed.

(e) Amendments to any previously filed annual report may be filed with the Secretary of State at any time for the purpose of correcting, updating, or augmenting the information contained in the annual report.

(f) The Secretary of State may revoke the registration of a registered limited liability partnership or foreign limited liability partnership if the Secretary of State determines that:

- (1) The registered limited liability partnership or foreign limited liability partnership has not paid, within 60 days after they are due, any penalties, fees, or other payments due under this Chapter;

- (2) The registered limited liability partnership or foreign limited liability partnership does not deliver its annual report to the Secretary of State on or before the date it is due;
- (3) The registered limited liability partnership or foreign limited liability partnership has been without a registered agent or registered office in this State for 60 days or more; or
- (4) The registered limited liability partnership or foreign limited liability partnership does not notify the Secretary of State within 60 days of the change, resignation, or discontinuance that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(g) If the Secretary of State determines that one or more grounds exist under subsection (f) of this section for revoking the registration of the registered limited liability partnership or foreign limited liability partnership, the Secretary of State shall mail the registered limited liability partnership or foreign limited liability partnership written notice of that determination. If, within 60 days after the notice is mailed, the registered limited liability partnership or foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground does not exist, the Secretary of State shall revoke the registration of a registered limited liability partnership or foreign limited liability partnership by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original certificate of revocation and mail a copy to the registered limited liability partnership or foreign limited liability partnership.

(h) A registered limited liability partnership or foreign limited liability partnership whose registration is revoked under this section may apply to the Secretary of State for reinstatement not later than five years after the effective date of the revocation. The procedures for reinstatement and for the appeal of any denial of the registered limited liability partnership or foreign limited liability partnership's application for reinstatement shall be the same procedures applicable to business corporations under G.S. 55-14-22, 55-14-23, and 55-14-24."

Section 10. Chapter 59 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 4A.

"Foreign Limited Liability Partnerships.

"§ 59-90. Law governing foreign limited liability partnership.

(a) The law of the state or jurisdiction under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(b) A foreign limited liability partnership may not be denied a statement of foreign registration by reason of any difference between the law under which the partnership was formed and the law of this State.

(c) A statement of foreign registration does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this State as a registered limited liability partnership.

"§ 59-91. Statement of foreign registration.

(a) Before transacting business in this State, a foreign limited liability partnership must file an application for registration as a foreign limited liability partnership. The application must contain:

- (1) The name of the foreign limited liability partnership that satisfies the requirements of the State or other jurisdiction under whose law it is formed and ends with the words "registered limited liability partnership" or "limited liability partnership" or the abbreviation "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".
- (2) The street address of the partnership's principal office.
- (3) The name and street address, and the mailing address if different from the street address, for the partnership's registered agent and registered office for service of process, and the county in which the registered office is located.
- (4) A brief statement of the business in which the partnership is engaged.
- (5) A deferred effective date, if any.
- (6) The fiscal year end of the partnership.

The foreign limited liability partnership shall deliver with the completed application a certificate of existence, or a document with similar import, duly authenticated by the secretary of state or other official having custody of the records of registered limited liability partnerships in the state or country under whose law it is registered.

(b) The registered agent of a foreign limited liability partnership for service of process must be (i) an individual who is a resident of this State and whose business office is identical with the registered office; (ii) a domestic corporation, nonprofit corporation, or limited liability company whose business office is identical with the registered office; or (iii) a foreign corporation, nonprofit corporation, or limited liability company authorized to transact business in this State whose business office is identical with the registered office. The sole duty of the registered agent to the foreign limited liability partnership is to forward to the foreign limited liability partnership at its last known address any notice, process, or demand that is served on the registered agent.

(c) An application for registration as a foreign limited liability partnership must be accompanied by a fee of one hundred twenty-five dollars (\$125.00).

(d) The Secretary of State shall register a partnership that submits a completed application for registration as a foreign limited liability partnership with the required fee.

(e) The status of a partnership as a foreign limited liability partnership is effective on the later of the date the registration is filed or a date specified in the statement. The status remains effective,

regardless of changes in the partnership, until it is voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by one or more partners or revoked pursuant to G.S. 59-84.4(f).

(f) An amendment or withdrawal of a registration is effective on the later of the date it is filed or a deferred effective date specified in the amendment or withdrawal.

(g) An application for registration as a foreign limited liability partnership must be executed by one or more partners.

(h) A foreign limited liability partnership authorized to transact business in this State shall be subject to the provisions of G.S. 59-84.4 regarding annual reports and revocation of registration.

"§ 59-92. *Effect of failure to register.*

(a) A foreign limited liability partnership transacting business in this State may not maintain an action or proceeding in this State unless it has in effect a registration as a foreign limited liability partnership.

(b) The failure of a foreign limited liability partnership to have in effect a registration as a foreign limited liability partnership does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by transacting business in this State without a registration as a foreign limited liability partnership.

(d) A foreign limited liability partnership failing to register as a foreign limited liability partnership as required by this Article shall be liable to the State for the years or parts thereof during which it transacted business in this State without having registered in an amount equal to all fees and taxes which would have been imposed by law upon the foreign limited liability partnership had it duly applied for and received such permission, plus interest and all penalties imposed by law for failure to pay such fees and taxes. In addition, the foreign limited liability partnership shall be liable for a civil penalty of ten dollars (\$10.00) for each day, but not to exceed a total of one thousand dollars (\$1,000) for each year or part thereof, it transacts business in this State without having registered. The Attorney General may bring actions to recover all amounts due the State under the provisions of this subsection.

"§ 59-93. *Activities not constituting transacting business.*

(a) Without excluding other activities that may not constitute transacting business in this State, a foreign limited liability partnership shall not be considered to be transacting business in this State for the purposes of this Article by reason of carrying on in this State any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

- (2) Holding meetings of its partners or carrying on other activities concerning its internal affairs;
 - (3) Maintaining bank accounts or borrowing money in this State, with or without security, even if such borrowings are repeated and continuous transactions;
 - (4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or appointing and maintaining trustees or depositories with relation to those securities;
 - (5) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance without this State before becoming binding contracts;
 - (6) Making or investing in loans with or without security including servicing of mortgages or deeds of trust through independent agencies within the State, the conducting of foreclosure proceedings and sales, the acquiring of property at foreclosure sale, and the management and rental of such property for a reasonable time while liquidating its investment, provided no office or agency therefor is maintained in this State;
 - (7) Taking security for or collecting debts due to it or enforcing any rights in property securing the same;
 - (8) Transacting business in interstate commerce;
 - (9) Conducting an isolated transaction completed within a period of six months and not in the course of a number of repeated transactions of like nature;
 - (10) Selling through independent contractors; and
 - (11) Owning, without more, real or personal property.
- (b) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

"§ 59-94. Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this Article."

Section 11. G.S. 59-102 reads as rewritten:

"§ 59-102. Definitions.

As used in this Article, unless the context otherwise requires:

- (1) 'Business' means any lawful trade, investment, or other purpose or activity, whether or not the trade, investment, purpose, or activity is carried on for profit.
- (1a) 'Certificate of limited partnership' means the certificate referred to in G.S. 59-201, and the certificate as amended.
- (2) 'Conformed copy' shall include a photostatic or other photographic copy of the original document.

- (3) 'Contribution' means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.
- (4) 'Event of withdrawal of a general partner' means an event that causes a person to cease to be a general partner as provided in G.S. 59-402.
- (5) 'Foreign limited partnership' means a partnership formed under the laws of any state, province, country, or other jurisdiction other than this State and having as partners one or more general partners and one or more limited partners.
- (6) 'General partner' means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.
- (7) 'Limited partner' means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.
- (8) 'Limited partnership' and 'domestic limited partnership' mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.
- (9) 'Partner' means a limited or general partner.
- (10) 'Partnership agreement' means any valid ~~agreement, written or oral, agreement~~ agreement of the partners as to the affairs of a limited partnership and partnership, the conduct of its business, business, and the responsibilities and rights of its partners. The term 'partnership agreement' includes any written or oral agreement, whether or not the agreement is set forth in a document referred to by the partners as a 'partnership agreement', and includes any amendment agreed upon by the partners unanimously or in accordance with the terms of the agreement. The term also includes any agreement of the partners to waive or revise the terms of the partnership agreement in one or more specific instances and not necessarily on an ongoing or permanent basis.
- (11) 'Partnership interest' means a partner's share of the allocations of income, gain, loss, deduction or credit of a limited partnership and the right to receive distributions of cash or other partnership assets.
- (12) 'Person' means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

- (13) 'State' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico."

Section 12. G.S. 59-106(a)(5) reads as rewritten:

"(5) ~~Unless contained in a written partnership agreement, A~~ written record that contains:

- a. The amount of cash and a description and statement of the agreed value of the other property or services contracted by each partner and which each partner has agreed to contribute;
- b. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;
- c. Any right of a partner to receive distribution of property, including cash from the limited partnership; and
- d. Events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

The written record required pursuant to this subdivision may be part of a written partnership agreement or may be contained in one or more other documents or records."

Section 13. G.S. 59-107 reads as rewritten:

"§ 59-107. Nature of business.

A limited partnership may be formed for and carry on any lawful business ~~that a partnership without limited partners may carry on.~~ business."

Section 14. G.S. 59-205 reads as rewritten:

"§ 59-205. ~~Amendment or cancellation~~ Execution by judicial act.

If a person ~~required by G.S. 59-204 to execute a certificate of amendment or cancellation~~ fails or refuses to ~~do so,~~ execute a certificate pursuant to G.S. 59-204, any other ~~partner, and any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal, may petition the court for the county in which the partnership's registered office is located to direct the ~~amendment or cancellation,~~ execution of the certificate. If the court finds that ~~the amendment or cancellation is proper~~ it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order an appropriate person to prepare, and the Secretary of State to record ~~record,~~ an appropriate ~~certificate of amendment or cancellation,~~ certificate."

Section 15. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by subdivision (3a) of this section subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited partnership holding title to the real property before the amendment shall appear in the 'Grantor' index, and the amended name of the limited partnership holding title to the real property by virtue of the amendment shall appear in the 'Grantee' index."

Section 16. G.S. 59-301 reads as rewritten:

"§ 59-301. ~~Admission of additional limited partners.~~

(a) In connection with the formation of a limited partnership, a person is admitted as a limited partner upon the later to occur of:

(1) The formation of the limited partnership; or

(2) The time provided for becoming a limited partner pursuant to and upon compliance with the partnership agreement.

(b) ~~After the filing formation of a limited partnership's original certificate of limited partnership,~~ a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, at the time provided pursuant to, and upon the compliance with with, the partnership agreement, or, if the partnership agreement does not so provide, upon the written consent of all partners; agreement; and

(2) In the case of an assignee of a partnership interest of a partner who has the power, as provided in G.S. 59-704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power."

Section 17. G.S. 59-302 reads as rewritten:

"§ 59-302. ~~Voicing.~~

~~Subject to G.S. 59-303, the~~ The partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter."

Section 18. G.S. 59-303 reads as rewritten:

"§ 59-303. ~~Liability to third parties.~~

(a) ~~Except as provided in subsection (d), a limited partner is not bound by the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.~~

(b) ~~A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:~~

(1) ~~Being a contractor for or an agent or employee of the limited partnership or of a general partner, or an officer, director, or shareholder of a corporate general partner;~~

(2) ~~Consulting with and advising a general partner with respect to the business of the limited partnership;~~

(3) ~~Acting as surety for the limited partnership;~~

(4) ~~Proposing, approving or disapproving an amendment to the partnership agreement;~~

- ~~(5) Proposing or voting on one or more of the following matters:~~
 - ~~a. The dissolution and winding up of the limited partnership;~~
 - ~~b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;~~
 - ~~c. The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;~~
 - ~~d. A change in the nature of the business; or~~
 - ~~e. The addition, removal or substitution of general partners;~~
- ~~(6) Bringing an action in the right of a limited partnership to recover a judgment in its favor pursuant to Part 10 of this Article;~~
- ~~(7) Approving or disapproving a transaction involving an actual or potential conflict of interest between a general partner and the limited partnership; or~~
- ~~(8) Requesting or attending a meeting of partners.~~

~~(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.~~

~~(d) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by G.S. 59-103(b)(i), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.~~

A limited partner is not liable for the obligations of a limited partnership by reason of being a limited partner and does not become liable for the obligations of a limited partnership by participating in the management or control of the business of the limited partnership."

Section 19. G.S. 59-304 reads as rewritten:

"§ 59-304. Person erroneously believing himself limited partner.

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that ~~he~~ the person has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he:

- (1) Causes an appropriate certificate of limited partnership or certificate of amendment to be executed and filed; or
- (2) Withdraws from future equity participation in the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise (i) ~~before the person withdraws from the enterprise,~~ or (ii) ~~before the person gives notice to~~

~~the partnership of his withdrawal from future equity participation, but only if the third party actually believed in good faith that the person was a general partner at the time of the transaction, in the case in which:~~

- (1) The third party actually believed in good faith that the person was a general partner at the time of the transaction; and
- (2) The third party transacted business with the enterprise before either:
 - a. An appropriate certificate has been filed pursuant to subsection (a) of this section to reflect that the person is not a general partner; or
 - b. The person has given notice to the partnership of withdrawal from future equity participation and before the withdrawal was effective."

Section 20. G.S. 59-305 reads as rewritten:

"§ 59-305. *Information.*

Each limited partner has the right to:

- (1) Inspect and copy any of the partnership records required to be maintained by G.S. 59-106; and
- (2) Obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, State, and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable."

Section 21. G.S. 59-402(4) reads as rewritten:

- "(4) Unless otherwise provided in writing in the partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against ~~him~~ the general partner in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of ~~his~~ the general partner's properties;"

Section 22. G.S. 59-402(5) reads as rewritten:

- "(5) Unless otherwise provided in writing in the partnership agreement, 120 days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute,

law, or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without ~~his~~ the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated;".

Section 23. G.S. 59-502(a) reads as rewritten:

"(a) Except as provided in the ~~agreement of limited partnership,~~ partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if ~~he~~ the partner is unable to perform because of death, disability or any other reason. If a partner does not make the required contribution of property or services, ~~he~~ the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value of the stated contribution that has not been made. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 24. G.S. 59-503 reads as rewritten:

"§ 59-503. *Sharing income, gain, loss, deduction or credit.*

~~Allocation of the income.~~ Income, gain, loss, deduction or credit of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide in writing, items of income, gain, loss, deduction or credit shall be allocated on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. To the extent the partnership agreement does not provide for the allocation of items of income, gain, loss, deduction, or credit, then those items shall be allocated on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 25. G.S. 59-504 reads as rewritten:

"§ 59-504. *Sharing of distributions.*

Distributions of cash or other assets of a limited partnership shall be made among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. To the extent the partnership agreement does not

provide for the sharing of distributions among the partners, distributions shall be made among the partners on the basis of the agreed value of the contributions made by each partner to the extent they have been received by the partnership and have not been returned. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 26. G.S. 59-602 reads as rewritten:

"§ 59-602. Withdrawal of general partner.

After filing of the original certificate of limited ~~partnership~~ partnership, a general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner, in addition to its other remedies, ~~and any~~ damages for breach of the partnership agreement, agreement and may offset the damages against the amount otherwise distributable or payable to the partner."

Section 27. G.S. 59-603 reads as rewritten:

"§ 59-603. Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership only at the time or upon the happening of events specified in writing in and in accordance with the partnership agreement, agreement, including any amendment or addendum to the partnership agreement agreed upon by the partners unanimously or in accordance with the terms of the agreement and made in connection with any permitted withdrawal. If the partnership agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw ~~withdraw~~, a limited partner may not withdraw prior to the ~~or a definite~~ time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months prior written notice to each general partner at his address on the books of the limited partnership at its registered office in this State. partnership."

Section 28. G.S. 59-604 reads as rewritten:

"§ 59-604. Distribution upon withdrawal.

Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which ~~he~~ the partner is entitled under the partnership agreement and, if not otherwise provided in the agreement, ~~he~~ the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of ~~his~~ the partner's partnership interest in the limited partnership as of the date of ~~withdrawal~~, withdrawal, based upon the partner's right to share in distributions from the limited partnership."

Section 29. G.S. 59-606 reads as rewritten:

"§ 59-606. Right to distribution.

Subject to the other provisions of Part 6 of this Article, at the time a partner becomes entitled to receive a distribution, ~~he~~ the partner has

the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution."

Section 30. G.S. 59-608(c) reads as rewritten:

"(c) A partner receives a return of ~~his~~ the partner's contribution to the extent that a distribution to ~~him~~ the partner reduces ~~his~~ the partner's share of the fair value of the net assets of the limited partnership below the agreed value of ~~his~~ the partner's contribution which has not been distributed to ~~him~~, the partner. As used in this section, the term 'agreed value' means an amount or other measure of value as (i) is provided in the partnership agreement, or (ii) if not provided in the partnership agreement, is required to be set forth in the written records required pursuant to G.S. 59-106."

Section 31. G.S. 59-702 reads as rewritten:

"§ 59-702. *Assignment of partnership interest.*

Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. Subject to G.S. 59-801(3) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the allocation and distribution to which the assignor would be entitled. Except as provided in the partnership agreement, ~~a limited partner shall continue to be a limited partner after assignment of all or any part of his partnership interest. Except as provided in the partnership agreement, a general partner ceases to be a general partner and to have the power to exercise any rights and powers of a partner upon assignment of all his of the partner's partnership interest. Except as provided in the partnership agreement, neither the pledge or granting of a security interest in any or all of the partnership interest of a partner nor the pledge or granting of a lien or other encumbrance against any or all of the partnership interest of a partner shall cause the partner to cease to be a partner or cease to have the power to exercise any rights or powers of a partner.~~"

Section 32. G.S. 59-704(b) reads as rewritten:

"(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Article. An assignee who becomes a limited partner also is liable for the obligations of ~~his~~ the assignee's assignor to make and return contributions as provided in ~~Part~~ Parts 5 and 6 of this Article. However, the assignee is not obligated for liabilities that (i) are unknown to the assignee at the time ~~he~~ the assignee became a limited partner and ~~which~~ (ii) could not be ascertained from the written provisions of the partnership agreement."

Section 33. G.S. 59-801 reads as rewritten:

"§ 59-801. *Nonjudicial dissolution.*

(a) A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

- (1) At the time specified in the certificate of limited partnership or upon the happening of events specified in writing in the partnership agreement;
- (2) Written consent of all partners;
- (3) An event of withdrawal of a general partner ~~unless at~~

unless:

a. At the time there is at least one other general partner and the written provisions of the partnership agreement permit partner, in which case, unless otherwise provided in a written partnership agreement or agreed upon by all remaining partners, (i) the limited partnership is not dissolved, (ii) the limited partnership shall not be wound up, and (iii) the business of the limited partnership to be carried on shall be continued by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within partners; or

b. Within 90 days after the withdrawal, all remaining partners partners, or a lesser number or portion of the partners provided in the partnership agreement, agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or desired, in which case the limited partnership is not dissolved and is not required to be wound up by reason of the event of withdrawal;

(3a) Ninety days after the withdrawal of the limited partnership's last limited partner, unless the limited partnership admits at least one limited partner before the end of the 90 days; or

(4) Entry of a decree of judicial dissolution under G.S. 59-802.

(b) The causes of dissolution of a limited partnership shall be governed solely by this Article. Article 2 of this Chapter, which governs the causes of dissolution of a partnership without limited partners, does not apply and shall not govern the causes of dissolution of a limited partnership."

Section 34. G.S. 59-901 reads as rewritten:

§ 59-901. *Law governing.*

Subject to the Constitution of this State, ~~(1)~~ (i) the laws of the jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its ~~limited~~ partners, and ~~(2)~~ (ii) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State."

Section 35. G.S. 59-903 reads as rewritten:

"§ 59-903. *Issuance of registration.*

(a) If the Secretary of State finds that an application satisfies the requirements of this Article, the Secretary shall, when all requisite fees have been tendered as in this Article prescribed:

- (1) Endorse on the application the word 'filed', and the hour, day, month and year of the filing thereof;
- (2) File in the office of the Secretary of State the application;
- (3) Issue a certificate of authority to transact business in this State to which the Secretary shall affix the conformed copy of the application; and
- (4) Send to the foreign limited partnership or its representative the certificate of authority, together with the conformed copy of the application affixed thereto."

Section 36. G.S. 59-907(e) reads as rewritten:

"(e) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without registration."

Section 37. G.S. 59-1002 reads as rewritten:

"§ 59-1002. *Proper plaintiff.*

In a derivative action, the plaintiff must be a partner at the time of bringing the action and ~~(1) (i) must have been a partner at the time of the transaction of which he complains that is the subject of the complaint or (2) his~~ (ii) the plaintiff's status as a partner had must have devolved upon him the partner by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction."

Section 38. Sections 2, 3, and 5 become effective October 1, 1999, and apply to liabilities arising on or after that date. Section 4 becomes effective January 1, 2000. Sections 6, 7, and 8 become effective January 1, 2000, and apply to registered limited liability partnerships existing on or after that date. Section 9 becomes effective January 1, 2000, and applies to registered limited liability partnerships and foreign limited liability partnerships whose fiscal year ends on or after that date. Section 10 becomes effective January 1, 2000, and applies to foreign limited liability partnerships transacting business in this State on or after that date, except that any foreign limited liability partnership that, as of that effective date, was already registered with the Secretary of State as a registered limited liability partnership shall not be required to register anew as a foreign limited liability partnership under G.S. 59-91. Section 27 becomes effective October 1, 1999, and applies to (i) any limited partnership formed before that date, only if validly adopted in writing by its partners or otherwise as a part of its partnership agreement, and (ii) all limited partnerships formed on or after that date. The remainder of this act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 8:14 p.m. on the 4th day of August, 1999.

S.B. 331

SESSION LAW 1999-363

AN ACT TO REQUIRE REGISTRATION AS A SEX OFFENDER
FOR CERTAIN ADDITIONAL OFFENSES.*The General Assembly of North Carolina enacts:***Section 1.** G.S. 14-208.6 reads as rewritten:*"§ 14-208.6. Definitions.*

The following definitions apply in this Article:

- (1a) 'County registry' means the information compiled by the sheriff of a county in compliance with this Article.
- (1b) 'Division' means the Division of Criminal Statistics of the Department of Justice.
- (1c) 'Mental abnormality' means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.
- (1d) 'Offense against a minor' means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's ~~parent or legal custodian;~~ parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.
- (2) 'Penal institution' means:
 - a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction;
 - b. A detention facility operated under the jurisdiction of another state or the federal government; or
 - c. A detention facility operated by a local government in this State or another state.
- (2a) 'Personality disorder' means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.
- (3) 'Release' means discharged or paroled.
- (4) 'Reportable conviction' means:
 - a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those ~~offenses;~~ offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court

sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

- b. A final conviction in another state of an offense, which if committed in this State, would have been an offense against a minor or a sexually violent offense as defined by this section.
 - c. A final conviction in a federal jurisdiction of an offense, which is substantially similar to an offense against a minor or a sexually violent offense as defined by this section.
- (5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in prostitution of a minor), or G.S. 14-202.1 (taking indecent liberties with children). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.
- (6) 'Sexually violent predator' means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.
- (7) 'Sheriff' means the sheriff of a county in this State.
- (8) 'Statewide registry' means the central registry compiled by the Division in accordance with G.S. 14-208.14."

Section 2. G.S. 14-208.26 reads as rewritten:

"§ 14-208.26. Registration of certain juveniles adjudicated delinquent for committing certain offenses.

(a) When a juvenile is adjudicated delinquent for ~~committing~~ a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), and the juvenile was at least eleven years of age at the time of the commission of the offense, the court shall consider whether the juvenile is a danger to the community. If the court finds

that the juvenile is a danger to the community, then the court shall consider whether the juvenile should be required to register with the county sheriff in accordance with this Part. The determination as to whether the juvenile is a danger to the community and whether the juvenile shall be ordered to register shall be made by the presiding judge at the dispositional hearing. If the judge rules that the juvenile is a danger to the community and that the juvenile shall register, then an order shall be entered requiring the juvenile to register. The court's findings regarding whether the juvenile is a danger to the community and whether the juvenile shall register shall be entered into the court record. No juvenile may be required to register under this Part unless the court first finds that the juvenile is a danger to the community.

A juvenile ordered to register under this Part shall register and maintain that registration as provided by this Part.

(a) For purposes of this section, a violation of any of the offenses listed in subsection (a) of this section includes all of the following: (i) the commission of any of those offenses, (ii) the attempt, conspiracy, or solicitation of another to commit any of those offenses, (iii) aiding and abetting any of those offenses.

(b) If the court finds that the juvenile is a danger to the community and must register, the presiding judge shall conduct the notification procedures specified in G.S. 14-208.8. The chief court counselor of that district shall file the registration information for the juvenile with the appropriate sheriff."

Section 3. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 8:20 p.m. on the 4th day of August, 1999.

S.B. 370

SESSION LAW 1999-364

AN ACT CLARIFYING WHEN WITNESS STATEMENTS OBTAINED PURSUANT TO THE ENFORCEMENT OF THE OCCUPATIONAL SAFETY AND HEALTH ACT MAY BE RELEASED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-136(e) reads as rewritten:

"(e) The Commissioner is authorized to compile, analyze, and publish, in summary or detailed form, all reports or information obtained under this section. Files and other records relating to investigations and enforcement proceedings pursuant to this Article shall not be subject to inspection and examination as authorized by G.S. 132-6 while such investigations and proceedings are pending, pending, except that, subject to the provisions of subsection (e1) of this section, an employer cited under the provisions of this Article is

entitled to receive a copy of the official inspection report which is the basis for citations received by the employer following the issuance of citations."

Section 2. G.S. 95-136(e1) reads as rewritten:

"(e1) Upon the written request of and at the expense of the requesting party, official inspection reports of inspections conducted pursuant to this Article shall be available for release in accordance with the provisions contained in this subsection and subsection (e) of this section. The names of witnesses or complainants, and any information within statements taken from witnesses or complainants during the course of inspections or investigations conducted pursuant to this Article that would name or otherwise identify the witnesses or complainants, shall not be released to any employer or third party. party and shall be redacted from any copy of the official inspection report provided to the employer or third party. Witness statements that are in the handwriting of the witness or complainant shall, upon the request of and at the expense of the requesting party, be transcribed so that information that would not name or otherwise identify the witness may be released. A witness or complainant may, however, sign a written release permitting the Commissioner to provide information specified in the release to any persons or entities designated in the release. Nothing in this section shall be construed to prohibit the use of the name or statement of a witness or complainant by the Commissioner in enforcement proceedings or hearings held pursuant to this Article. The Commissioner shall make available to the employer 10 days prior to a scheduled enforcement hearing unredacted copies of: (i) the witness statements the Commissioner intends to use at the enforcement hearing, (ii) the statements of witnesses the Commissioner intends to call to testify, or (iii) the statements of witnesses whom the Commissioner does not intend to use that might support an employer's affirmative defense or otherwise exonerate the employer; provided a written request for the statement or statements is received by the Commissioner no later than 12 days prior to the enforcement hearing. If the request for an unredacted copy of the witness statement or statements is received less than 12 days before a hearing, the statement or statements shall be made available as soon as practicable. The Commissioner may permit the use of names and statements of witnesses and complainants and information obtained during the course of inspections or investigations conducted pursuant to this Article by public officials in the performance of their public duties."

Section 3. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 8:25 p.m. on the 4th day of August, 1999.

S.B. 394

SESSION LAW 1999-365

AN ACT TO ALLOW PREMIUMS FOR INSURANCE COVERAGE
TO BE PAID BY CREDIT CARD.*The General Assembly of North Carolina enacts:***Section 1.** G.S. 58-3-145 reads as rewritten:

"§ 58-3-145. Solicitation, negotiation or payment of premiums on insurance policies through credit card facilities prohibited; exceptions. policies."

~~Except as otherwise provided herein, no authorized insurer and no representative of such insurer or insurance broker shall employ or avail itself of the facilities of any person, firm or corporation engaged in the credit card business to solicit or negotiate any contract of insurance upon any life or risk within the State of North Carolina, or accept the payment of premiums upon a policy of insurance, insuring any life or risk in the State of North Carolina, through the use of any credit card facility. Except as otherwise provided herein, no person, firm or corporation engaged in the business of extending credit through a credit card system shall, on behalf of any insurer, its representative or any insurance broker, utilize his or its credit card facilities to solicit for, negotiate contracts of insurance or accept the payment of premiums upon any contract of insurance from credit card holders or prospective credit card holders who reside in this State. The solicitation for and the negotiation of policies of insurance prohibited by this section shall include, but shall not be limited to, the transmittal of applications for insurance, premium rate schedules, circulars, letters or sales literature pertaining to insurance to credit card holders or prospective credit card holders who reside in this State. Credit card business as used in this section shall mean the business of extending credit to persons who are holders of credit cards issued by the credit card facility or organization entitling the holder to pay charges for purchases or other transactions through the use of credit card facilities.~~

~~Nothing in this section shall prohibit an authorized insurer, the representative of such insurer, or an insurance broker from accepting payment of an insurance premium through a credit card facility provided and operated by a banking corporation principally domiciled in this State and doing business under the laws of the State of North Carolina or the United States. No such bank shall be prohibited from making such credit card facility available for this limited purpose, provided, that all records relating to the payment of insurance premiums through such credit card facility are maintained within the State of North Carolina.~~

~~Nothing in this section shall prohibit an authorized insurer, the representative of such insurer, or an insurance broker from notifying its or his customers or prospective customers through means other~~

~~than credit card facilities of the availability of credit card facilities for the payment of insurance premiums.~~

~~Nothing in this section shall prohibit any authorized insurer qualified to do business in the State of North Carolina pursuant to the provisions of Articles 1 through 64 of this Chapter, and any representative of such insurer or insurance broker, from employing or availing itself of the facilities of any person, firm or corporation engaged in the business of extending credit through a credit card system for the limited purposes of soliciting for or negotiating any contract of travel accident insurance upon any life or risk within the State of North Carolina arising from travel, including but not limited to airline flight insurance, or accepting the payment of premiums thereon, through the use of any credit card facility. Nor shall anything in this section prohibit any person, firm or corporation engaged in the business of extending credit through a credit card system on behalf of any insurer, its representative or any insurance broker, from utilizing his or its credit card facilities for the limited purposes of soliciting for or negotiating contracts of travel accident insurance, including but not limited to airline flight insurance, or accepting the payment of premiums thereon, from credit card holders or prospective credit card holders who reside in this State.~~

An insurer, agent, or broker may accept payment of an insurance premium by credit card if the insurer accepting payment by credit card meets the following conditions:

- (1) The insurer makes payment by credit card available to all existing and prospective insureds and does not limit the use of credit card payments to certain persons.
- (2) The insurer pays the fees charged by the credit card company for the payment of premiums by credit card."

Section 2. G.S. 58-57-105(a) reads as rewritten:

~~"(a) Notwithstanding G.S. 58-3-145, credit~~ Credit card facilities may be used for the solicitation, negotiation, or payment of premiums for credit insurance on the unpaid balance of any credit card ~~account, account pursuant to G.S. 58-3-145.~~ Solicitation or negotiation for credit insurance on credit card account balances may not be made by unsolicited telephone calls or facsimile transmissions."

Section 3. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 8:29 p.m. on the 4th day of August, 1999.

S.B. 708

SESSION LAW 1999-366

AN ACT ALLOWING COUNTIES TO PROVIDE AFFORDABLE HOUSING FOR PERSONS OF LOW AND MODERATE INCOME.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds and declares that the purpose of this act is to provide authority for counties in North Carolina to provide funds for residential housing construction, new or rehabilitated, and to provide for the sale or rental of housing to persons and families of low and moderate income. The General Assembly finds and declares that there exists in counties in the State a serious shortage of decent, safe, and sanitary residential housing available at low prices or rentals to persons and families of low and moderate income. This shortage is inimical to the health, safety, welfare, and prosperity of all residents of the State and to the sound growth of North Carolina communities.

Section 2. Part 5 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-378. Low- and moderate-income housing programs.

In addition to the powers granted by G.S. 153A-376 and G.S. 153A-377, any county is authorized to exercise the following powers:

- (1) To engage in and to appropriate and expend funds for residential housing construction, new or rehabilitated, for sale or rental to persons and families of low and moderate income. Any board of commissioners may contract with any person, association, or corporation to implement the provisions of this subdivision.
- (2) To acquire real property by voluntary purchase from the owners to be developed by the county or to be used by the county to provide affordable housing to persons of low and moderate income.
- (3) Under procedures and standards established by the county, to convey property by private sale to any public or private entity that provides affordable housing to persons of low or moderate income. The county shall include as part of any such conveyance covenants or conditions that assure the property will be developed by the entity for sale or lease to persons of low or moderate income.
- (4) Under procedures and standards established by the county, to convey residential property by private sale to persons of low or moderate income in accordance with G.S. 160A-267 and any terms and conditions that the board of commissioners may determine."

Section 3. G.S. 153A-149(c) is amended by adding a new subdivision to read:

"(15b) Housing. -- To undertake housing programs for low- and moderate-income persons as provided in G.S. 153A-378."

Section 4. G.S. 159-48(c) reads as rewritten:

"(c) Each county is authorized to borrow money and issue its bonds under this Article in evidence of the debt for the purpose of, in the case of subdivisions (1) through (4a) of this subsection, paying any capital costs of any one or more of the purposes and, in the case

of ~~subdivision (5)~~ subdivisions (5) and (6) of this subsection, to finance the cost of the purpose:

- (1) Providing community college facilities, including without limitation buildings, plants, and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages.
- (2) Providing courthouses, including without limitation offices, meeting rooms, court facilities and rooms, and detention facilities.
- (3) Providing county homes for the indigent and infirm.
- (4) Providing school facilities, including without limitation schoolhouses, buildings, plants and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles.
- (4a) Providing improvements to subdivision and residential streets pursuant to G.S. 153A-205.
- (5) Providing for the octennial revaluation of real property for taxation.
- (6) Providing housing projects for persons of low or moderate income, including construction or acquisition of projects to be owned by a county, redevelopment commission, or housing authority and the provision of loans, grants, interest supplements, and other programs of financial assistance to such persons. A housing project may provide housing for persons of other than low or moderate income if at least forty percent (40%) of the units in the project are exclusively reserved for persons of low or moderate income. No rent subsidy may be paid from bond proceeds."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 8:35 p.m. on the 4th day of August, 1999.

S.B. 746

SESSION LAW 1999-367

AN ACT TO CREATE THE NORTH CAROLINA STRUCTURED SETTLEMENT PROTECTION ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 44B."Structured Settlement Protection Act."§ 1-543.10. Title.

This Article may be cited as the North Carolina Structured Settlement Protection Act.

"§ 1-543.11. Definitions.

For purposes of this Article:

- (1) 'Annuity issuer' means an insurer that has issued an annuity or insurance contract used to fund periodic payments under a structured settlement;
- (2) 'Discounted present value' means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;
- (3) 'Independent professional advice' means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:
 - a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;
 - b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and
 - c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;
- (4) 'Interested parties' means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;
- (5) 'Payee' means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;
- (6) 'Qualified assignment agreement' means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;
- (7) 'Responsible administrative authority' means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;
- (8) 'Settled claim' means the original tort claim resolved by a structured settlement;
- (9) 'Structured settlement' means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim;
- (10) 'Structured settlement agreement' means the agreement, judgment, stipulation, or release embodying the terms of a

structured settlement, including the rights of the payee to receive periodic payments;

- (11) 'Structured settlement obligor' means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;
- (12) 'Structured settlement payment rights' means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:
 - a. The payee is domiciled in this State;
 - b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or
 - c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;
- (13) 'Transfer' means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;
- (14) 'Terms of the structured settlement' include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and
- (15) 'Transfer agreement' means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee.

"§ 1-543.12. Structured settlement payment rights.

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

- (1) The transfer complies with the requirements of this Article law;
- (2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:
 - a. The amounts and due dates of the structured settlement payments to be transferred;
 - b. The aggregate amount of such payments;

- c. The discounted present value of such payments;
 - d. The gross amount payable to the payee in exchange for such payments;
 - e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;
 - f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;
 - g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments;
 - h. The discount rate used by the transferee to determine the net amount payable to the payee for the structured settlement payments to be transferred; and
 - i. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;
- (3) The transfer is in the best interest of the payee;
 - (4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;
 - (5) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority;
 - (6) The discount rate used in determining the net amount payable to the payee, as provided in subdivision (2) of this section, does not exceed an annual percentage rate of prime plus five percentage points calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan. For purposes of this subdivision, the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the month in which the transfer agreement is signed by both the payee and the transferee, except when the transfer agreement is signed prior to the first Monday of that month then the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the preceding month;

- (7) Any brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee do not exceed two percent (2%) of the net amount payable to the payee;
- (8) The transfer of structured settlement payment rights is fair and reasonable; and
- (9) Notwithstanding a provision of the structured settlement agreement prohibiting an assignment by the payee, the court may order a transfer of periodic payment rights provided that the court finds that the provisions of this Article are satisfied.

If the court or responsible administrative authority authorizes the transfer pursuant to this section, the court or responsible administrative authority shall order the structured settlement obligor to execute an acknowledgment of assignment letter on behalf of the transferee for the amount of the structured settlement payment rights to be transferred.

"§ 1-543.13. Jurisdiction.

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

"§ 1-543.14. Procedure for approval of transfers.

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the

proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.11(4), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

- (1) A copy of the transferee's application;
- (2) A copy of the transfer agreement;
- (3) A copy of the disclosure statement required under G.S. 1-543.12(a)(2);
- (4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article.

"§ 1-543.15. No waiver; penalties.

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without complying with this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars (\$5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights transferred in violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article."

Section 2. Article 33 of Chapter 1 of the General Statutes is amended by adding a new section to read as follows:

"§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge."

Section 3. This act shall apply to any transfer of structured settlement payment rights under a transfer agreement entered into on or after October 1, 1999, provided that this act shall not apply to any transfer of structured settlement payment rights under a structured settlement agreement entered into or effective prior to that date where the transfer does not contravene the terms of the structured settlement. Nothing contained herein shall imply that any transfer under a transfer agreement reached prior to October 1, 1999, is effective.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 8:42 p.m. on the 4th day of August, 1999.

S.B. 776

SESSION LAW 1999-368

AN ACT TO AMEND THE LAW EXEMPTING CERTAIN
GOVERNMENTAL ENTITIES FROM STATE PURCHASE AND
CONTRACT REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-315.36 reads as rewritten:

"§ 113-315.36. ~~Purchase of supplies, material, equipment, and building~~
~~Building contracts.~~

(a) The following general laws, to the extent provided below, do not apply to the North Carolina Seafood Industrial Park Authority:

(1) ~~Article 3 of Chapter 143 of the General Statutes does not apply to contracts for supplies, materials, equipment, and contractual services of the Authority, but, with respect to these contracts, the powers and duties established in that Article shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the contracts.~~

(2) Except for G.S. 143-128(f), Article 8 of Chapter 143 of the General Statutes does not apply to public building contracts of the Authority, but, with respect to these contracts, the powers and duties established in that Article Authority that require the estimated expenditure of public money in an amount less than two hundred fifty thousand dollars (\$250,000). With respect to a contract that is exempted from certain provisions of Article 8 under this subdivision, the powers and duties set out in Article 8 shall be exercised by the Authority, and the Secretary of Administration and other State officers, employees, or agencies shall have no duties or responsibilities concerning the ~~contracts, contract.~~

(3) G.S. 143-341(3) ~~shall does~~ not apply to the plans and specifications for construction or renovation authorized by the ~~North Carolina Seafood Industrial Park Authority.~~ Authority that require the estimated expenditure of public

money in an amount less than two hundred fifty thousand dollars (\$250,000).

(b) Notwithstanding the other provisions of this section, the services of the Department of Administration may be made available to the Authority, when requested by the Authority, with regard to matters governed by ~~Articles 3 and Article 8~~ of Chapter 143 of the General Statutes and G.S. 143-341(3). The Authority shall report quarterly to the Joint Legislative Commission on Governmental Operations on any ~~purchases or building contracts exceeding two hundred fifty thousand dollars (\$250,000)~~ building contract to which this exemption is applied. The quarterly report required by this subsection shall specifically include information regarding the Authority's compliance with the provisions of G.S. 143-128(f)."

Section 2. Section 4 of S.L. 1997-331 reads as rewritten:

"Section 4. This act is effective when it becomes law and expires ~~July 1, 1999~~, law. Section 3 of this act expires July 1, 1999."

Section 3. This act becomes effective July 1, 1999.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 8:48 p.m. on the 4th day of August, 1999.

S.B. 835

SESSION LAW 1999-369

AN ACT TO REVISE THE LAW GOVERNING MERGERS, CONSOLIDATIONS, AND CONVERSIONS AMONG BUSINESS CORPORATIONS, NONPROFIT CORPORATIONS, AND UNINCORPORATED ENTITIES, INCLUDING LIMITED LIABILITY COMPANIES AND PARTNERSHIPS, FOR THE PURPOSE OF CONFORMING THE LAWS WITH THOSE OF OTHER STATES AND MODERN BUSINESS PRACTICES; TO ALLOW CONVERSION OF A MUTUAL INSURANCE COMPANY TO A STOCK INSURANCE COMPANY; AND TO PERMIT HOMEOWNER ASSOCIATIONS TO DISTRIBUTE SURPLUS FUNDS.

The General Assembly of North Carolina enacts:

PART I. CORPORATIONS.

Section 1.1. G.S. 55-1-20(f) reads as rewritten:

"(f) The A document submitted by a domestic or foreign corporation or nonprofit corporation must be executed:

- (1) By the chairman of the board of ~~directors of a domestic or foreign corporation,~~ directors, by its president, or by another of its officers;
- (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or
- (3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

Section 1.2. G.S. 55-1-40(9) reads as rewritten:

"(9) 'Entity' includes (without limiting the meaning of such term in Article 9) corporation and foreign corporation; nonprofit corporation; professional corporation; limited liability company; profit and nonprofit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government."

Section 1.3. G.S. 55-1-40 is amended by adding the following new subdivision, to be placed by the Codifier of Statutes in the appropriate order, to read:

"(25a) 'Unincorporated entity' means a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State."

Section 1.4. G.S. 55-4-05 reads as rewritten:

"§ 55-4-05. *Real property records.*

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to its real property in this State is ~~transferred~~ vested by operation of law in another entity upon merger of two or more corporations, merger, consolidation, or conversion of the corporation, a certificate reciting such change or transfer the name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign corporation, a similar certificate by any competent authority of the jurisdiction of incorporation may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the corporation

holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended new~~ name of the corporation or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 1.5. G.S. 55-9-01(b)(1) reads as rewritten:

"(1) 'Business combination' includes any merger or consolidation of a corporation with or into any other ~~corporation~~, corporation or any unincorporated entity, or the sale or lease of all or any substantial part of the corporation's assets to, or any payment, sale or lease to the corporation or any subsidiary thereof in exchange for securities of the corporation of any assets (except assets having an aggregate fair market value of less than five million dollars (\$5,000,000)) of any other entity."

Section 1.6. G.S. 55-9-04(d) reads as rewritten:

"(d) Nothing contained in this Article shall be construed to relieve any other entity from any fiduciary obligation imposed by law. This Article shall be broadly construed so as to be applicable to any transaction reasonably calculated to avoid the application of the provisions hereof including, without limitation, any merger or other recapitalization, initiated by or for the benefit of an other entity that owns more than twenty percent (20%) of the voting shares, which would reincorporate a corporation under the laws of another ~~state~~, state or which would reorganize a corporation as an unincorporated entity."

Section 1.7. G.S. 55-11-06(a)(4) reads as rewritten:

"(4) A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;"

Section 1.8. Article 11 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"§ 55-11-10. *Merger with unincorporated entity.*

(a) As used in this section, 'business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, and any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State).

(b) One or more domestic corporations may merge with one or more unincorporated entities and, if desired, one or more foreign corporations, domestic nonprofit corporations, or foreign nonprofit corporations if:

- (1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and
- (2) Each merging domestic corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection.

(c) Each merging domestic corporation and each other merging business entity shall approve a written plan of merger containing:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (2) The name of the merging business entity that shall survive the merger;
- (3) The terms and conditions of the merger;
- (4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and
- (5) If the surviving business entity is a domestic corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic corporation, approval of the plan of merger requires that the plan of merger be adopted by its board of directors as provided in G.S. 55-11-03 and, unless shareholder approval is not required under subsection (g) of G.S. 55-11-03, be approved by its shareholders as provided in G.S. 55-11-03. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of that merging business entity.

After a plan of merger has been approved by a domestic corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors without further shareholder action.

(d) After a plan of merger has been approved by each merging domestic corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- (1) The plan of merger;

- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The name and address of the surviving business entity;
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and
- (5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) A merger takes effect when the articles of merger become effective. When a merger takes effect:

- (1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;
- (2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;
- (3) The surviving business entity has all liabilities of each merging business entity;
- (4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;
- (5) If a domestic corporation is the surviving business entity, its articles of incorporation shall be amended to the extent provided in the plan of merger;
- (6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the articles of merger or, in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of this Chapter; and
- (7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of this Chapter and otherwise to

comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of the merging business entity.

If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

- (1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of this Chapter, and (iii) any obligation of the surviving business entity arising from the merger; and
- (2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process. Upon receipt of service of process on behalf of a surviving business entity, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application.

(f) This section does not apply to a merger that does not include a merging unincorporated entity."

Section 1.9. G.S. 55-15-21 reads as rewritten:

"§ 55-15-21. *Withdrawal of foreign corporation by reason of a merger, consolidation, or conversion.*

(a) Whenever ~~the separate existence~~ of a foreign corporation authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by those laws, the surviving ~~corporation~~ or resulting entity shall apply for a certificate of

withdrawal for the ~~merged foreign~~ corporation by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under the laws of which such ~~statutory merger was effected~~, foreign corporation was incorporated. If the surviving ~~corporation or resulting entity~~ is not authorized to transact business in this State the articles of ~~merger~~ or certificate must be accompanied by an application which must set forth:

- (1) The name of ~~each merged~~ the foreign corporation authorized to transact business in this ~~State and the State~~, the type of entity and name of the surviving corporation or resulting entity, and a statement that the surviving corporation or resulting entity is not authorized to transact business in this State;
 - (2) ~~That~~ A statement that the surviving corporation or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time ~~each merged the foreign~~ corporation was authorized to transact business in this State may thereafter be made ~~on such corporation~~ by service thereof on the Secretary of State;
 - (3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2); and
 - (4) A commitment to notify the Secretary of State in the future of any change in its mailing address.
- (b) If the Secretary of State finds that the articles of ~~merger~~ or certificate and the application for withdrawal, if required, ~~conforms~~ conform to law ~~he~~ the Secretary of State shall:

- (1) Endorse on the articles of ~~merger~~ or certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month and year of the filing thereof;
- (2) File the articles of ~~merger~~ or certificate and the application, if required;
- (3) Issue a certificate of withdrawal; and
- (4) Send to the ~~foreign corporation~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

PART II. NONPROFIT CORPORATIONS.

Section 2.1. G.S. 55A-1-20(f) reads as rewritten:

"(f) ~~The~~ A document submitted by a domestic or foreign corporation or business corporation shall be executed:

- (1) By the presiding officer of the board of directors ~~of a domestic or foreign corporation~~, by its president, or by another of its officers;

- (2) If directors have not been selected or the corporation has not been formed, by an incorporator; or
- (3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by an unincorporated entity must be executed by a person authorized to execute documents (i) pursuant to G.S. 57C-1-20(f) if the unincorporated entity is a domestic or foreign limited liability company, (ii) pursuant to G.S. 59-204 if the unincorporated entity is a domestic or foreign limited partnership, or (iii) pursuant to G.S. 59-73.7(a)(4) if the unincorporated entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

Section 2.2. G.S. 55A-1-40 is amended by adding the following new subdivision to read:

"(25a) 'Unincorporated entity' means a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State."

Section 2.3. G.S. 55A-4-05 reads as rewritten:

"§ 55A-4-05. Real property records.

(a) Whenever the name of any domestic or foreign corporation holding title to real property in this State is changed upon amendment to the articles of incorporation or whenever title to its real property in this State is ~~transferred~~ vested by operation of law in another entity upon merger of two or more corporations, merger, consolidation, or conversion of the corporation, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded by the corporation or its successor in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for recording in accordance with this section. In the case of a foreign corporation, a similar certificate by any competent authority of the jurisdiction of incorporation may be recorded in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the corporation holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended new~~ new name of the corporation or the name of the other entity holding title to the real property by virtue of

the ~~amendment or merger~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 2.4. G.S. 55A-11-02 reads as rewritten:

"§ 55A-11-02. *Limitations on mergers by charitable or religious corporations.*

(a) Without the prior approval of the superior court in a proceeding in which the Attorney General has been given written notice, a charitable or religious corporation may merge only with:

- (1) A charitable or religious corporation;
- (2) A foreign corporation that would qualify under this Chapter as a charitable or religious corporation;
- (3) A wholly owned foreign or domestic corporation (business or nonprofit) which is not a charitable or religious corporation, or an unincorporated entity, provided the charitable or religious corporation is the ~~surviving corporation~~ survivor in the merger and continues to be a charitable or religious corporation after the merger; or
- (4) A business or nonprofit corporation (foreign or domestic) other than a charitable or religious corporation, or an unincorporated entity, provided that: (i) on or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the charitable or religious corporation or the fair market value of the charitable or religious corporation if it were to be operated as a business concern are transferred or conveyed to one or more persons who would have received its assets under G.S. 55A-14-03(a)(1) and (2) had it dissolved; (ii) it shall return, transfer or convey any assets held by it upon condition requiring return, transfer or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (iii) the merger is approved by a majority of directors of the charitable or religious corporation who are not and will not become ~~members~~ members, as 'member' is defined in G.S. 55A-1-40(16) or G.S. 57C-1-03, partners, limited partners, or shareholders in or directors, managers, officers, employees, agents, or consultants of the ~~surviving corporation~~ survivor in the merger.

(b) At least 20 days before consummation of any merger of a charitable or religious corporation pursuant to subdivision (a)(4) of this section, notice, including a copy of the proposed plan of merger, shall be delivered to the Attorney General.

(c) Without the prior written consent of the Attorney General, or approval of the superior court in a proceeding in which the Attorney General has been given notice, no member of a charitable or religious corporation may receive or retain any property as a result of a merger other than ~~a membership~~ an interest as a member, as 'member' is defined in G.S. 55A-1-40(16), ~~in the surviving corporation~~ survivor of the merger. The Attorney General may consent to the transaction,

or the court shall approve the transaction, if it is fair and not contrary to the public interest."

Section 2.5. G.S. 55A-11-05(a)(4) reads as rewritten:

"(4) A proceeding pending by or against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and".

Section 2.6. G.S. 55A-11-07 reads as rewritten:

"§ 55A-11-07. *Bequests, devises, and gifts.*

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance, that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the surviving corporation survivor in the merger unless the will or other instrument otherwise specifically provides."

Section 2.7. Article 11 of Chapter 55A of the General Statutes is amended by adding a new section to read:

"§ 55A-11-09. *Merger with unincorporated entity.*

(a) As used in this section, 'business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, and any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any limited liability partnership formed under a law other than the laws of this State).

(b) One or more domestic nonprofit corporations may merge with one or more unincorporated entities and, if desired, one or more foreign nonprofit corporations, domestic business corporations, or foreign business corporations if:

- (1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each of the other merging business entities;
- (2) Each merging domestic nonprofit corporation and each other merging business entity comply with the requirements of this section and, to the extent applicable, the laws referred to in subdivision (1) of this subsection; and
- (3) The merger complies with G.S. 55A-11-02, if applicable.

(c) Each merging domestic nonprofit corporation and each other merging business entity shall approve a written plan of merger containing:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;

- (2) The name of the merging business entity that shall survive the merger;
- (3) The terms and conditions of the merger;
- (4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and
- (5) If the surviving business entity is a domestic nonprofit corporation, any amendments to its articles of incorporation that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

In the case of a domestic nonprofit corporation, approval of the plan of merger requires that the plan of merger be adopted as provided in G.S. 55A-11-03. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

After a plan of merger has been approved by a domestic nonprofit corporation but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or, if there is no such provision, as determined by the board of directors.

(d) After a plan of merger has been approved by each merging domestic nonprofit corporation and each other merging business entity as provided in subsection (c) of this section, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- (1) The plan of merger;
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The name and address of the surviving business entity;
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and
- (5) The effective date and time of merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

Certificates of merger shall also be registered as provided in G.S. 47-18.1.

(e) A merger takes effect when the articles of merger become effective. When a merger takes effect:

- (1) Each other merging business entity merges into the surviving business entity and the separate existence of each merging business entity except the surviving business entity ceases;
- (2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;
- (3) The surviving business entity has all liabilities of each merging business entity;
- (4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;
- (5) If a domestic nonprofit corporation is the surviving business entity, its articles of incorporation shall be amended to the extent provided in the plan of merger;
- (6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the articles of merger or, in the case of former holders of shares in a domestic business corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and
- (7) If the surviving business entity is not a domestic business corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic business corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic business corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of the merging business entity.

If the surviving business entity is not a domestic limited liability company, a domestic business corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

- (1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic business corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined

in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic business corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and

- (2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process. Upon receipt of service of process on behalf of a surviving business entity, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application.

(f) This section does not apply to a merger that does not include a merging unincorporated entity."

Section 2.8. G.S. 55A-15-21 reads as rewritten:

"§ 55A-15-21. *Withdrawal of foreign corporation by reason of a merger.* ~~merger, consolidation, or conversion.~~

(a) ~~Whenever the separate existence of~~ a foreign corporation authorized to conduct affairs in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was incorporated, or converts into another entity as permitted by those laws, the surviving ~~corporation~~ or resulting entity shall apply for a certificate of withdrawal ~~for the merged~~ the foreign corporation by delivering to the Secretary of State for filing a copy of the articles of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under the laws of which ~~such statutory merger was effected.~~ the foreign corporation was incorporated. If the surviving or resulting entity corporation is not authorized to conduct affairs in this State, the articles ~~of merger~~ or certificate shall be accompanied by an application which must set forth:

- (1) The name of ~~each merged~~ the foreign corporation authorized to conduct affairs in this ~~State and State,~~ the type of entity and the name of the surviving corporation or resulting entity, and a statement that the surviving corporation or resulting entity is not authorized to conduct affairs in this State;

- (2) That A statement that the surviving corporation or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of affairs conducted in this State, during the time each merged the foreign corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the Secretary of State;
 - (3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and
 - (4) A commitment to notify the Secretary of State in the future of any change in its mailing address.
- (b) If the Secretary of State finds that the articles of ~~merger~~ or certificate and the application for withdrawal, if required, ~~conforms~~ conform to law the Secretary of State shall:
- (1) Endorse on the articles of ~~merger~~ or certificate and the application for withdrawal, if required, the word 'filed', and the hour, day, month, and year of filing thereof;
 - (2) File the articles of ~~merger~~ or certificate and the application, if required;
 - (3) Issue a certificate of withdrawal; and
 - (4) Send to the ~~foreign corporation~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

PART III. LIMITED LIABILITY COMPANIES.

Section 3.1. G.S. 57C-1-20(f) reads as rewritten:

"(f) The A document submitted by a domestic or foreign limited liability company must be executed:

- (1) By a manager of ~~a domestic or foreign~~ the limited liability company;
- (2) If managers have not been selected, or if the limited liability company does not have a manager other than a member, by any member;
- (3) If the limited liability company has not been formed, by an organizer; or
- (4) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

A document submitted by a business entity other than a domestic or foreign limited liability company must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a corporation or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business entity is any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State."

Section 3.2. G.S. 57C-1-03 is amended by adding a new subdivision to read:

"(3a) Business entity. -- A corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State.)"

Section 3.3. G.S. 57C-1-03(15) reads as rewritten:

"(15) Membership interest or interest. -- All In the context of a member of a limited liability company, the terms mean all of a member's rights in the limited liability company, including without limitation the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company assets, any right to vote, and any right to participate in management."

Section 3.4. G.S. 57C-2-20(a) reads as rewritten:

"(a) One or more persons may organize a limited liability company by delivering executed articles of organization to the Secretary of State for filing. A limited liability company may also be formed through the conversion of another business entity pursuant to Part 1 of Article 9A of this Chapter."

Section 3.5.(a) G.S. 57C-2-34 reads as rewritten:

"§ 57C-2-34. *Real property records.*

(a) Whenever the name of any domestic or foreign limited liability company holding title to real property in this State is changed upon amendment to its articles of organization or whenever title to its real property in this State is ~~transferred~~ vested by operation of law in another entity upon merger merger, consolidation, or conversion of two or more the limited liability companies, company, a certificate reciting the ~~change or transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(b) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited liability company, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this section.

(c) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees,

but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited liability company holding title to the real property before the ~~amendment or merger~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended new~~ name of the limited liability company or the name of the other entity holding title to the real property by virtue of the ~~amendment or merger~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee' index."

Section 3.5.(b) Section 3 of S.L. 1999-189 is repealed.

Section 3.6. G.S. 57C-7-12 reads as rewritten:

"§ 57C-7-12. *Withdrawal of limited liability company by reason of a ~~merger~~ merger, consolidation, or conversion.*

(a) ~~Whenever the separate existence of~~ a foreign limited liability company authorized to transact business in this State ceases its separate existence as a result of a statutory ~~merger merger~~, consolidation, or conversion permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the ~~merged~~ foreign limited liability company by delivering to the Secretary of State for filing a copy of the articles of ~~merger merger~~, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited liability company records in the state or country under the laws of which ~~such statutory merger~~ the foreign limited liability company was effected, organized. If the surviving or resulting entity is not authorized to transact business in this State, the articles of ~~merger~~ or certificate must be accompanied by an application which must set forth:

- (1) The name of ~~each merged~~ the foreign limited liability company authorized to transact business in this ~~State and State~~, the type of entity and name of the surviving or resulting entity entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;
- (2) ~~That~~ A statement that the surviving or resulting entity consents that service of process based upon any cause of action arising in this State, or arising out of business transacted in this State, during the time ~~each merged~~ the foreign limited liability company was authorized to transact business in this State, may thereafter be made ~~on such foreign limited liability company~~ by service thereof on the Secretary of State;
- (3) A mailing address to which the Secretary of State may mail a copy of any process served on him under subdivision (a)(2) of this section; and
- (4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the articles of ~~merger~~ or certificate and the application for withdrawal, if required, ~~conforms~~ conform to law, the Secretary of State shall:

- (1) Endorse on the articles of ~~merger~~ or certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month, and year of filing thereof;
- (2) File the articles of ~~merger~~ or certificate and the application, if required;
- (3) Issue a certificate of withdrawal; and
- (4) Send to the ~~foreign limited liability company~~ surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

Section 3.7. Article 9 of Chapter 57C of the General Statutes is repealed. Chapter 57C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 9A.

"Conversion and Merger.

"Part 1. Conversions.

"§ 57C-9A-01. Conversion.

(a) A domestic limited liability company may convert to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes.

(b) A foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State) may convert to a domestic limited liability company if:

- (1) The converting business entity complies with the requirements of this Part; and
- (2) If the converting business entity is a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the conversion is permitted by the laws of the state or country governing the organization and internal affairs of the converting business entity and the converting business entity complies with those laws.

"§ 57C-9A-02. Plan of conversion.

(a) The holders of the interests in the converting business entity shall approve a written plan of conversion containing:

- (1) The name of the resulting domestic limited liability company into which the converting business entity shall convert;
- (2) The terms and conditions of the conversion; and
- (3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or

securities of the resulting domestic limited liability company or into cash or other property in whole or in part.

The plan of conversion may also contain other provisions relating to the conversion.

(b) In the case of a domestic limited partnership or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before articles of organization for the resulting domestic limited liability company become effective, the plan of conversion may be amended or abandoned to the extent provided in the plan of conversion.

"§ 57C-9A-03. Filing of articles of organization by converting business entity.

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 57C-9A-02, the converting business entity shall deliver articles of organization to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 57C-2-21, the articles of organization shall state:

- (1) That the domestic limited liability company is being formed pursuant to a conversion of another business entity;
- (2) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and
- (3) That a plan of conversion has been approved by the converting business entity as required by law.

If the plan of conversion is abandoned before the articles of organization become effective, the converting business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of organization reflecting the abandonment of the plan of conversion.

(b) The conversion takes effect when the articles of organization become effective.

(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"§ 57C-9A-04. Effects of conversion.

When the conversion takes effect:

- (1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic limited liability company;
- (2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic limited liability company without reversion or impairment;
- (3) All liabilities of the converting business entity continue as liabilities of the resulting domestic limited liability company;
- (4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and
- (5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic limited liability company or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"Part 2. Merger.

"§ 57C-9A-05. Merger.

A domestic limited liability company may merge with one or more other domestic limited liability companies or other business entities if:

- (1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and
- (2) Each merging domestic limited liability company and each other merging business entity comply with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"§ 57C-9A-06. Plan of merger.

(a) Each merging domestic limited liability company and each other merging business entity shall approve a written plan of merger containing:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (2) The name of the merging business entity that shall survive the merger;
- (3) The terms and conditions of the merger;

- (4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and
- (5) If the surviving business entity is a domestic limited liability company, any amendments to its articles of organization that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic limited liability company, the plan of merger must be approved in the manner provided in its articles of organization or a written operating agreement for approval of a merger with the type of business entity contemplated in the plan of merger, or, if there is no provision, by the unanimous consent of its members. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited liability company but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger, articles of organization, or written operating agreement or, if not so provided, as determined by the managers of the domestic limited liability company in accordance with G.S. 57C-3-20(b).

"§ 57C-9A-07. Articles of merger.

(a) After a plan of merger has been approved by each merging domestic limited liability company and each other merging business entity as provided in G.S. 57C-9A-06, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- (1) The plan of merger;
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The name and address of the surviving business entity;
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and
- (5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect when the articles of merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"§ 57C-9A-08. Effects of merger.

(a) When the merger takes effect:

- (1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity, except the surviving business entity ceases;
- (2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;
- (3) The surviving business entity has all liabilities of each merging business entity;
- (4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;
- (5) If a domestic limited liability company is the surviving business entity, its articles of organization shall be amended to the extent provided in the plan of merger;
- (6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the articles of merger or, in the case of former holders of shares in a domestic corporation, any rights they may have under Article 13 of Chapter 55 of the General Statutes; and
- (7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of that merging business entity.

If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership when the merger takes effect, the surviving business entity is deemed:

- (1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and
- (2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process. Upon receipt of service of process on behalf of a surviving business entity, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application."

PART IV. PARTNERSHIPS.

Section 4.1. Article 2 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 7. Conversion and Merger.

"§ 59-73.1. Definitions.

As used in this Part:

- (1) 'Domestic partnership' means a partnership as defined in G.S. 59-36 that is formed under the laws of this State, including a registered limited liability partnership as defined in G.S. 59-32, but excluding a domestic limited partnership as defined in G.S. 59-102.
- (2) 'Business entity' means a domestic corporation as defined in G.S. 55-1-40 (including a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company as defined in G.S. 57C-1-03, a domestic or foreign limited partnership as defined in G.S. 59-102, a domestic partnership, or any other partnership as defined in G.S. 59-36 formed under a law

other than the laws of this State (including a limited liability partnership).

- (3) 'Partnership' means a partnership as defined in G.S. 59-36 whether or not formed under the laws of this State including a registered limited liability partnership and any other limited liability partnership formed under a law other than the laws of this State but excluding a domestic limited partnership as defined in G.S. 59-102 and a foreign limited partnership as defined in G.S. 59-102.

"§ 59-73.2. Conversion of domestic partnership.

A domestic partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes, or to a domestic limited partnership pursuant to Part 10A of Article 5 of Chapter 59 of the General Statutes.

"§ 59-73.3. Merger.

A domestic partnership may merge with one or more other domestic partnerships or other business entities if:

- (1) The merger is permitted by laws of the state or country governing the organization and internal affairs of each other merging business entity; and
- (2) Each merging domestic partnership and each other merging business entity comply with the requirements of this Part and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"§ 59-73.4. Plan of merger.

(a) Each merging domestic partnership and each other merging business entity shall approve a written plan of merger containing:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (2) The name of the merging business entity that shall survive the merger;
- (3) The terms and conditions of the merger; and
- (4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of such merging business entity.

(c) After a plan of merger has been approved by the domestic partnership but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that is binding on all the partners or, if not so provided, as determined by the unanimous consent of the partners.

"§ 59-73.5. Articles of merger.

(a) After a plan of merger has been approved by each merging domestic partnership and each other merging business entity as provided in G.S. 59-73.4, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- (1) The plan of merger;
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The name and address of the surviving business entity;
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and
- (5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect when the articles of merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"§ 59-73.6. Effects of merger.

(a) When a merger takes effect:

- (1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity except the surviving business entity ceases;
- (2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;
- (3) The surviving business entity has all liabilities of each merging business entity;
- (4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;

- (5) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or other property are thereupon so converted, and the former holders of the interests in each merging business entity are entitled only to the rights provided to them in the articles of merger or, in the case of former holders of shares in a domestic corporation (as defined in G.S. 55-1-40), any rights they may have under Article 13 of Chapter 55 of the General Statutes; and
- (6) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business entity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity shall not constitute a dissolution or termination of the merging business entity.

If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership when the merger takes effect, the surviving business entity is deemed:

- (1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership, or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and
- (2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process. Upon receipt of service of process on behalf of a surviving business entity, the Secretary of State shall immediately mail

a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been filed, at the address for service of process contained in that application.

"§ 59-73.7. Filing of documents.

(a) To be entitled to filing by the Secretary of State, a document submitted pursuant to this Part must meet all of the following requirements:

- (1) The document must contain the information required by this Part. It may contain other information as well.
- (2) The document must be typewritten or printed.
- (3) The document must be in the English language.
- (4) A document submitted by a partnership must be executed by a general partner of the partnership. A document submitted by a business entity other than a partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited liability company, or (iv) pursuant to G.S. 59-204 if the business entity is a domestic or foreign limited partnership.
- (5) The person executing the document must sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. Any signature on the document may be a facsimile. The document may, but need not, contain an acknowledgment, verification, or proof.
- (6) The document must be delivered to the Office of the Secretary of State for filing and must be accompanied by one exact or conformed copy and by the required filing fee.

(b) A partnership may correct a document filed by the Secretary of State pursuant to this Part if the document (i) contains a statement that is incorrect and was incorrect when the document was filed or (ii) was defectively executed, attested, sealed, verified, or acknowledged.

A document is corrected by:

- (1) Preparing articles of correction that (i) describe the document (including its filing date) or have attached to them a copy of the document, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and
- (2) Delivering the articles of correction to the Secretary of State for filing, accompanied by one exact or conformed copy and the required filing fee.

Articles of correction are effective on the effective date of the document that is corrected except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

(c) The Secretary of State shall collect the following fees when the documents described in this subsection are submitted by a partnership to the Secretary of State for filing:

<u>Document</u>	<u>Fee</u>
<u>Articles of Merger</u>	<u>\$50.00</u>
<u>Articles of Correction</u>	<u>\$10.00</u>

The Secretary of State shall collect a fee of ten dollars (\$10.00) each time process is served on the Secretary of State under this Part. The party to the proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

The Secretary of State shall collect the following fees for copying, comparing, and certifying a copy of a document filed by a partnership pursuant to this Part:

- (1) One dollar (\$1.00) a page for copying or comparing a copy to the original; and
- (2) Five dollars (\$5.00) for the certificate.

(d) The Secretary of State shall guarantee the expedited filing of a document upon receipt of the document in proper form and the payment of the required filing fee. The Secretary of State may collect the following additional fees for the expedited filing of a document received in good form:

- (1) Two hundred dollars (\$200.00) for the filing by the end of the same business day of a document received by 12:00 noon Eastern Standard Time; and
- (2) One hundred dollars (\$100.00) for the filing of a document within 24 hours after receipt, excluding weekends and holidays.

The Secretary of State shall not collect the fees allowed in this subsection unless the person submitting the document for filing requests an expedited filing and is informed by the Secretary of State of the fees prior to the filing of the document.

(e) Upon request, the Secretary of State shall provide for the review of a document prior to its submission for filing to determine whether it satisfies the requirements of this Part. Submission of a document for review shall be accompanied by the proper fee and shall be in accordance with procedures adopted by rule by the Secretary of State. The advisory review shall be completed within 24 hours after submission, excluding weekends and holidays, unless the person submitting the document is otherwise notified in accordance with procedures adopted by rule by the Secretary of State fixing priority between submissions under this subsection and filings under subsection (d) of this section. Upon completion of the advisory review, the Secretary of State shall notify the person submitting the document of any deficiencies in the document that would prevent its filing.

(f) Except as provided in this subsection and in subsection (b) of this section, a document accepted for filing is effective:

- (1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or
- (2) At the time specified in the document as its effective time on the date it is filed.

A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the 90th day after the date it is filed.

The fact that a document has become effective under this subsection does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

(g) If a document delivered to the Office of the Secretary of State for filing satisfies the requirements of this Part, the Secretary of State shall file it. Documents filed with the Secretary of State pursuant to this Part may be maintained by the Secretary either in their original form or in photographic, microfilm, optical disk media, or other reproduced form. The Secretary may make reproductions of documents filed under this Part, or under any predecessor act, by photographic, microfilm, optical disk media, or other means of reproduction, and may destroy the originals of those documents reproduced.

The Secretary of State files a document by stamping or otherwise endorsing 'Filed', together with the Secretary of State's name and official title and the date and time of filing, on both the original and the document copy. After filing a document, the Secretary of State shall deliver the document copy to the partnership or its representative.

If the Secretary of State refuses to file a document, the Secretary of State shall return it to the partnership or its representative within five days after the document was received, together with a brief, written explanation of the reason for refusal. The Secretary of State may correct apparent errors and omissions on a document submitted for filing if authorized to make the corrections by the person submitting the document for filing. Prior to making the correction, the Secretary shall confirm the authorization to make the corrections according to procedures adopted by rule.

The Secretary of State's duty is to review and file documents that satisfy the requirements of this Part. The Secretary of State's filing or refusing to file a document does not:

- (1) Affect the validity or invalidity of the document in whole or part;
- (2) Relate to the correctness or incorrectness of information contained in the document; or

- (3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

(h) If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the person tendering the document for filing may, within 30 days after the refusal, appeal the refusal to the Superior Court of Wake County. The appeal is commenced by filing a petition with the court and with the Secretary of State requesting the court to compel the Secretary of State to file the document. The petition shall have attached to it the document to be filed and the Secretary of State's explanation for the refusal to file. The appeal to the Superior Court is not governed by Chapter 150B of the General Statutes, the Administrative Procedure Act, and the court shall determine, based upon what is appropriate under the circumstances, any further notice and opportunity to be heard.

Upon consideration of the petition and any response made by the Secretary of State, the court may, prior to entering final judgment, order the Secretary of State to file the document or take other action the court considers appropriate.

The court's final decision may be appealed as in other civil proceedings.

(i) A certificate attached to a copy of a document filed by the Secretary of State, bearing the Secretary of State's signature (which may be in facsimile) and the seal of office and certifying that the copy is a true copy of the document, is conclusive evidence that the original document is on file with the Secretary of State. A photographic, microfilm, optical disk media, or other reproduced copy of a document filed pursuant to this Part or any predecessor act, when certified by the Secretary, shall be considered an original for all purposes and is admissible in evidence in like manner as an original.

(j) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing. An offense under this subsection is a Class 1 misdemeanor.

(k) Whenever title to real property in this State held by a partnership is vested by operation of law in another entity upon merger, consolidation, or conversion of the partnership, a certificate reciting the merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property is located, or if the property is located in more than one county, then in each county where any portion of the property is located.

The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this subsection. In the case of a partnership formed under a law other than the laws of this State, a similar certificate by any competent authority of the jurisdiction of organization may be registered in accordance with this subsection.

The certificate required by this subsection shall be recorded by the register of deeds in the same manner as deeds, and for the same fees,

but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The former name of the partnership holding title to the real property before the merger, consolidation, or conversion shall appear in the 'Grantor' index and the name of the other entity holding title to the real property by virtue of the merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 4.2. G.S. 59-102 is amended by adding a new subdivision to read:

"(1a) 'Business entity' means a domestic corporation as defined in G.S. 55-1-40 (including, without limitation, a professional corporation as defined in G.S. 55B-2), a foreign corporation as defined in G.S. 55-1-40 (including, without limitation, a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a domestic limited partnership, a foreign limited partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this State)."

Section 4.3. G.S. 59-201 is amended by adding a new subsection to read:

"(d) A limited partnership may also be formed through the conversion of another business entity in accordance with Part 10A of this Article."

Section 4.4. G.S. 59-204 reads as rewritten:

"§ 59-204. Execution of ~~certificates~~ documents."

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

- (1) An original certificate of limited partnership must be signed by all general partners;
- (2) A certificate of amendment must be signed by at least one general partner and by each other partner designated in the certificate as a new general partner; and
- (3) A certificate of cancellation must be signed by all general partners.

Any other document submitted by a domestic or foreign limited partnership for filing pursuant to this or any other Chapter must be signed by at least one general partner. Any document submitted by a business entity other than a domestic or foreign limited partnership must be executed by a person authorized to execute documents (i) pursuant to G.S. 55-1-20(f) if the business entity is a domestic or foreign corporation, (ii) pursuant to G.S. 55A-1-20(f) if the business entity is a domestic or foreign nonprofit corporation, (iii) pursuant to G.S. 57C-1-20(f) if the business entity is a domestic or foreign limited

liability company, or (iv) pursuant to G.S. 59-73.7(a)(4) if the business entity is a partnership as defined in G.S. 59-36, whether or not formed under the laws of this State, other than a domestic or foreign limited partnership.

(b) Any person may sign a certificate by an attorney-in-fact.

(b1) Any signature on any document authorized to be filed with the Secretary of State under any provision of this Article may be a facsimile.

(c) The execution of a certificate or amendment by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true."

Section 4.5. G.S. 59-206(a)(3a) reads as rewritten:

"(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, or whenever title to its real property is vested by operation of law in another entity upon merger, consolidation, or conversion of the domestic or foreign limited partnership, a certificate reciting the change or ~~transfer~~ name change, merger, consolidation, or conversion shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies."

Section 4.6. G.S. 59-206(a)(5) reads as rewritten:

"(5) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the domestic or foreign limited partnership holding title to the real property before the ~~amendment~~ name change, merger, consolidation, or conversion shall appear in the 'Grantor' index, and the ~~amended~~ new name of the domestic or foreign limited partnership or the name of the other entity holding title to the real property by virtue of the ~~amendment~~ merger, consolidation, or conversion, as applicable, shall appear in the 'Grantee' index."

Section 4.7. Article 5 of Chapter 59 of the General Statutes is amended by adding a new section to read:

"§ 59-909. Withdrawal of foreign limited partnership by reason of a merger, consolidation, or conversion.

(a) Whenever a foreign limited partnership authorized to transact business in this State ceases its separate existence as a result of a statutory merger or consolidation permitted by the laws of the state or country under which it was organized, or converts into another type of entity as permitted by those laws, the surviving or resulting entity shall apply for a certificate of withdrawal for the foreign limited partnership by delivering to the Secretary of State for filing a copy of the articles

of merger, consolidation, or conversion or a certificate reciting the facts of the merger, consolidation, or conversion, duly authenticated by the Secretary of State or other official having custody of limited partnership records in the state or country under the laws of which the foreign limited partnership was organized. If the surviving or resulting entity is not authorized to transact business in this State, the articles or certificate must be accompanied by an application which must set forth:

- (1) The name of the foreign limited partnership authorized to transact business in this State, the type of entity and name of the surviving or resulting entity, and a statement that the surviving or resulting entity is not authorized to transact business in this State;
- (2) A statement that the surviving or resulting entity consents that service of process based on any cause of action arising in this State, or arising out of business transacted in this State, during the time the foreign limited partnership was authorized to transact business in this State, may thereafter be made by service thereof on the Secretary of State;
- (3) A mailing address to which the Secretary of State may mail a copy of any process served upon the Secretary under subdivision (a)(2) of this section; and
- (4) A commitment to notify the Secretary of State in the future of any change in its mailing address.

(b) If the Secretary of State finds that the articles or certificate and the application for withdrawal, if required, conform to law, the Secretary of State shall:

- (1) Endorse on the articles or certificate and the application for withdrawal, if required, the word 'filed' and the hour, day, month, and year of filing thereof;
- (2) File the articles or certificate and the application, if required;
- (3) Issue a certificate of withdrawal; and
- (4) Send to the surviving or resulting entity or its representative the certificate of withdrawal, together with the exact or conformed copy of the application, if required, affixed thereto."

Section 4.8. Article 5 of Chapter 59 of the General Statutes is amended by adding a new Part to read:

"Part 10A. Conversion and Merger.

"§ 59-1007. Conversions.

(a) A domestic limited partnership may convert to a domestic limited liability company pursuant to Part 1 of Article 9A of Chapter 57C of the General Statutes.

(b) A domestic limited liability company as defined in G.S. 57C-1-03, a foreign limited liability company as defined in G.S. 57C-1-03, a foreign limited partnership, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State, including a registered limited liability partnership as defined in G.S.

59-32, and any other limited liability partnership formed under a law other than the laws of this State, but excluding a domestic limited partnership, may convert to a domestic limited partnership if:

- (1) Such converting business entity complies with the requirements of G.S. 59-1008 and G.S. 59-1009; and
- (2) If the converting business entity is a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the conversion is permitted by laws of the state or country governing the organization and internal affairs of the converting business entity, and the converting business entity complies with the laws.

"§ 59-1008. Plan of conversion.

(a) The holders of the interests in the converting business entity shall approve a written plan of conversion containing:

- (1) The name of the resulting domestic limited partnership into which the converting business entity shall convert;
- (2) The terms and conditions of the conversion; and
- (3) The manner and basis for converting the interests in the converting business entity into interests, obligations, or securities of the resulting domestic limited partnership or into cash or other property in whole or in part.

The plan of conversion may contain other provisions relating to the conversion.

(b) In the case of a domestic limited liability company, the plan of conversion must be approved in the manner provided for approval of such a conversion in its articles of organization or a written operating agreement or, if there is no such provision, by the unanimous consent of its members. In the case of a partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by the laws of this State, the plan of conversion must be approved in the manner provided for the approval of such a conversion in a written partnership agreement that is binding on all the partners or, if there is no such provision, by the unanimous consent of all the partners. In the case of a foreign limited liability company, a foreign limited partnership, or other partnership as defined in G.S. 59-36 whose organization and internal affairs are governed by a law other than the laws of this State, the plan of conversion must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the converting business entity.

(c) After a plan of conversion has been approved as provided in subsection (b) of this section, but before a certificate of limited partnership for the resulting domestic limited liability company becomes effective, the plan of conversion may be amended or abandoned to the extent provided in the plan of conversion.

"§ 59-1009. Filing of certificate of limited partnership by converting business entity.

(a) After a plan of conversion has been approved by the converting business entity as provided in G.S. 59-1008, the converting business entity shall deliver a certificate of limited partnership to the Secretary of State for filing. In addition to the matters required or permitted by G.S. 59-201, the certificate of limited partnership shall state:

- (1) That the domestic limited partnership is being formed pursuant to a conversion of another business entity;
- (2) The name of the converting business entity, its type of business entity, and the state or country whose laws govern its organization and internal affairs; and
- (3) That a plan of conversion has been approved by the converting business entity in the manner required by law.

If the plan of conversion is abandoned before the certificate of limited partnership becomes effective, the converting business entity promptly shall deliver to the Secretary of State for filing an amendment to the certificate of limited partnership reflecting the abandonment of the plan of conversion.

(b) The conversion takes effect when the certificate of limited partnership becomes effective.

(c) The converting business entity shall furnish a copy of the plan of conversion, on request and without cost, to any member or partner (whether general or limited) of the converting business entity.

(d) Certificates of conversion shall also be registered as provided in G.S. 47-18.1.

"§ 59-1010. Effects of conversion.

(a) When the conversion takes effect:

- (1) The converting business entity ceases its prior form of organization and continues in existence as the resulting domestic limited partnership;
- (2) The title to all real estate and other property owned by the converting business entity continues vested in the resulting domestic limited partnership without reversion or impairment;
- (3) All liabilities of the converting business entity continue as liabilities of the resulting domestic limited partnership;
- (4) A proceeding pending by or against the converting business entity may be continued as if the conversion did not occur; and
- (5) The interests in the converting business entity that are to be converted into interests, obligations, or securities of the resulting domestic partnership or into the right to receive cash or other property are thereupon so converted, and the former holders of interests in the converting business entity are entitled only to the rights provided in the plan of conversion.

The conversion shall not affect the liability or absence of liability of any holder of an interest in the converting business entity for any acts, omissions, or obligations of the converting business entity made or incurred prior to the effectiveness of the conversion. The cessation of

the existence of the converting business entity in its prior form of organization in the conversion shall not constitute a dissolution or termination of the converting business entity.

"§ 59-1011. Merger.

A domestic limited partnership may merge with one or more other domestic limited partnerships or other business entities if:

- (1) The merger is permitted by the laws of the state or country governing the organization and internal affairs of each other merging business entity; and
- (2) Each merging domestic limited partnership and each other merging business entity comply with the requirements of G.S. 59-1012 and G.S. 59-1013, and, to the extent applicable, the laws referred to in subdivision (1) of this section.

"§ 59-1012. Plan of merger.

(a) Each merging domestic limited partnership and each other merging business entity shall approve a written plan of merger containing:

- (1) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (2) The name of the merging business entity that shall survive the merger;
- (3) The terms and conditions of the merger;
- (4) The manner and basis for converting the interests in each merging business entity into interests, obligations, or securities of the surviving business entity or into cash or other property in whole or in part; and
- (5) If the surviving business entity is a domestic limited partnership, any amendments to its certificate of limited partnership that are to be made in connection with the merger.

The plan of merger may contain other provisions relating to the merger.

(b) In the case of a merging domestic limited partnership, the plan of merger must be approved in the manner provided in a written partnership agreement that is binding on all the partners for approval of a merger with the type of business entity contemplated in the plan of merger or, if there is no provision, by the unanimous consent of its partners. In the case of each other merging business entity, the plan of merger must be approved in accordance with the laws of the state or country governing the organization and internal affairs of the merging business entity.

(c) After a plan of merger has been approved by a domestic limited partnership, but before the articles of merger become effective, the plan of merger (i) may be amended as provided in the plan of merger, or (ii) may be abandoned (subject to any contractual rights) as provided in the plan of merger or a written partnership agreement that

is binding on all the partners or, if there is no such provision, as determined by the unanimous consent of the partners.

"§ 59-1013. Articles of merger.

(a) After a plan of merger has been approved by each merging domestic limited partnership and each other merging business entity as provided in G.S. 59-1012, the surviving business entity shall deliver articles of merger to the Secretary of State for filing. The articles of merger shall set forth:

- (1) The plan of merger;
- (2) For each merging business entity, its name, type of business entity, and the state or country whose laws govern its organization and internal affairs;
- (3) The name and address of the surviving business entity;
- (4) A statement that the plan of merger has been approved by each merging business entity in the manner required by law; and
- (5) The effective date and time of the merger if it is not to be effective at the time of filing of the articles of merger.

If the plan of merger is amended or abandoned before the articles of merger become effective, the surviving business entity promptly shall deliver to the Secretary of State for filing an amendment to the articles of merger reflecting the amendment or abandonment of the plan of merger.

(b) A merger takes effect when the articles of merger become effective.

(c) Certificates of merger shall also be registered as provided in G.S. 47-18.1.

"§ 59-1014. Effects of merger.

(a) When the merger takes effect:

- (1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business entity except the surviving business entity ceases;
- (2) The title to all real estate and other property owned by each merging business entity is vested in the surviving business entity without reversion or impairment;
- (3) The surviving business entity has all liabilities of each merging business entity;
- (4) A proceeding pending by or against any merging business entity may be continued as if the merger did not occur, or the surviving business entity may be substituted in the proceeding for a merging business entity whose separate existence ceases in the merger;
- (5) If a domestic limited partnership is the surviving business entity, its certificate of limited partnership shall be amended to the extent provided in the plan of merger;
- (6) The interests in each merging business entity that are to be converted into interests, obligations, or securities of the surviving business entity or into the right to receive cash or

other property are thereupon so converted, and the former holders of the interests are entitled only to the rights provided to them in the articles of merger or, in the case of former holders of shares in a domestic corporation as defined in G.S. 55-1-40, any rights they have under Article 13 of Chapter 55 of the General Statutes; and

- (7) If the surviving business entity is not a domestic corporation, the surviving business entity is deemed to agree that it will promptly pay to the dissenting shareholders of any merging domestic corporation the amount, if any, to which they are entitled under Article 13 of Chapter 55 of the General Statutes and otherwise to comply with the requirements of Article 13 as if it were a surviving domestic corporation in the merger.

The merger shall not affect the liability or absence of liability of any holder of an interest in a merging business entity for any acts, omissions, or obligations of any merging business equity made or incurred prior to the effectiveness of the merger. The cessation of separate existence of a merging business entity in the merger shall not constitute a dissolution or termination of such merging business entity.

(b) If the surviving business entity is not a domestic limited liability company, a domestic corporation, a domestic nonprofit corporation, or a domestic limited partnership, when the merger takes effect the surviving business entity is deemed:

- (1) To agree that it may be served with process in this State in any proceeding for enforcement of (i) any obligation of any merging domestic limited liability company, domestic corporation, domestic nonprofit corporation, domestic limited partnership or other partnership as defined in G.S. 59-36 that is formed under the laws of this State, (ii) the rights of dissenting shareholders of any merging domestic corporation under Article 13 of Chapter 55 of the General Statutes, and (iii) any obligation of the surviving business entity arising from the merger; and
- (2) If the surviving business entity does not have a registered agent in this State, to have appointed the Secretary of State as its registered agent for service of process in any such proceeding until such time as the surviving business entity appoints a registered agent in this State. Service on the Secretary of State of any such process shall be made by delivering to and leaving with the Secretary of State or with any clerk authorized by the Secretary of State to accept service of process, duplicate copies of such process. Upon receipt of service of process on behalf of a surviving business entity, the Secretary of State shall immediately mail a copy of the process by registered or certified mail, return receipt requested, to the surviving business entity at its address shown in the articles of merger or, if an application for a certificate of withdrawal by reason of merger has been

filed, at the address for service of process contained in that application."

PART V. CONFORMING CHANGES.

Section 5.1. G.S. 47-18.1 reads as rewritten:

"§ 47-18.1. Registration of certificate of corporate ~~merger or consolidation~~ merger, consolidation, or conversion.

(a) If title to real property in this State is ~~transferred~~ vested by operation of law in another entity upon the ~~merger or consolidation of two or more corporations~~, merger, consolidation, or conversion of an entity, such ~~transfer~~ vesting is effective against lien creditors or purchasers for a valuable consideration from the ~~corporation~~ entity formerly owning the property, only from the time of registration of a certificate thereof as provided in this section, in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county.

(b) The Secretary of State shall adopt uniform certificates of ~~merger or consolidation~~, merger, consolidation, or conversion, to be furnished for registration, and shall adopt such fees as are necessary for the expense of such certification. If the ~~corporation~~ entity involved is not a domestic ~~corporation~~, entity, a similar certificate by any competent authority in the jurisdiction of incorporation or organization may be registered in accordance with this section.

(c) A certificate of the Secretary of State prepared in accordance with this section shall be registered by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer shall be required. The name of the ~~corporation~~ entity formerly owning the property shall appear in the 'Grantor' index, and the name of the ~~corporation~~ entity owning the property by virtue of the ~~merger or consolidation~~ merger, consolidation, or conversion shall appear in the 'Grantee' index."

Section 5.2. G.S. 105-129.4(e) reads as rewritten:

"(e) Change in Ownership of Business. -- The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

- (1) The business closed before it was acquired.
- (2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

- (3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism."

Section 5.3. G.S. 105-129.27(d) reads as rewritten:

"(d) Change in Ownership of Facility. -- The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a recycling facility, or any transaction by which the facility is reformulated as another business, does not create new eligibility in a succeeding owner with respect to a credit for which the predecessor was not eligible under this section. A successor business may, however, take any carried-over portion of a credit that its predecessor could have taken if it had a tax liability."

Section 5.4. G.S. 105-130.4(j)(3) reads as rewritten:

"(3) The average value of property shall be determined by averaging the values at the beginning and end of the income year, but in all cases the Secretary of Revenue may require the averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property. A corporation ~~which~~ that ceases its operations in this State before the end of its income year because of its intention to dissolve or to relinquish its certificate of authority, or because of a ~~merger~~ merger, conversion, or consolidation, or for any other reason whatsoever shall use the real estate and tangible personal property values as of the first day of the income year and the last day of its operations in this State in determining the average value of property, but the Secretary may require averaging of monthly or other periodic values during the income year if reasonably required to reflect properly the average value of the corporation's property."

Section 5.5. G.S. 105-130.17(e) reads as rewritten:

"(e) Any corporation ~~which~~ that ceases its operations in this State before the end of its income year because of its intention to dissolve or to withdraw from this State, or because of a ~~merger~~ merger, conversion, or consolidation or for any other reason whatsoever shall file its return for the then current income year within 75 days after the date it terminates its business in this State."

Section 5.6. G.S. 105-163.010(2) reads as rewritten:

"(2) Business. -- A corporation, partnership, limited liability company, association, or sole proprietorship operated for profit."

Section 5.7. G.S. 105-163.013(f) reads as rewritten:

"(f) Transfer of Registration. -- A registration as a qualified business venture or qualified grantee business may not be sold or otherwise transferred, except that if a qualified business venture or qualified grantee business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving ~~corporation~~ company would otherwise meet the criteria for being a qualified business venture or qualified grantee business,

the surviving company retains the registration without further application to the Secretary of State. In such a case, the qualified business venture or qualified grantee business shall provide the Secretary of State with written notice of the merger, conversion, consolidation, or similar transaction and the name, address, and jurisdiction of incorporation or organization of the surviving company."

Section 5.8. G.S. 105-163.014(d)(1) reads as rewritten:

"(1) Within one year after the investment was made, the taxpayer transfers any of the securities received in the investment that qualified for the tax credit to another person or entity, other than in a transfer resulting from one of the following:

- a. The death of the taxpayer.
- b. A final distribution in liquidation to the owners of a taxpayer that is a corporation or other entity.
- c. A merger, conversion, consolidation, or similar transaction requiring approval by the ~~shareholders~~ owners of the qualified business venture or qualified grantee business under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, conversion, consolidation, or other similar transaction."

Section 5.9. G.S. 105-187.6(b)(2) reads as rewritten:

"(2) To a ~~partnership~~ partnership, limited liability company, or corporation as an incident to the formation of the partnership or corporation and partnership, limited liability company, or corporation, and no gain or loss arises on the transfer of the motor vehicle under section 351 or section 721 of the Internal Revenue Code, Code as defined in G.S. 105-228.90, or to a partnership, limited liability company, or corporation by merger or merger, conversion, or consolidation in accordance with G.S. 55-11-06, applicable law."

Section 5.10.(a) G.S. 105-228.29 reads as rewritten:

"§ 105-228.29. *Conveyances excluded.*

The provisions of this Article shall not apply to transfers of an interest in real estate by operation of law, by lease for a term of years, by or pursuant to the provisions of a will, by intestacy, by gift, by ~~merger~~ merger, conversion, or consolidation, or by instruments securing indebtedness, or any other transfer where no consideration in property or money is due or paid by the transferee to transferor."

Section 5.10.(b) Subsection (a) of this section expires July 1, 2000.

Section 5.10.(c) Effective July 1, 2000, G.S. 105-228.29(7) as enacted by Section 1 of S.L. 1999-28 reads as rewritten:

"(7) By ~~merger~~ merger, conversion, or consolidation."

PART VI. MUTUAL TO STOCK INSURANCE CONVERSION.

Section 6. Article 10 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"§ 58-10-10. Mutual conversion to stock insurer.

(a) A domestic mutual insurer may convert to a domestic stock insurer under a plan that is approved in advance by the Commissioner.

(b) The Commissioner shall not approve the plan unless:

- (1) It is fair and equitable to the insurer's policyholders.
- (2) It is adopted by the insurer's board of directors in accordance with the insurer's bylaws and approved by a vote of not less than two-thirds of the insurer's members voting on it in person, by proxy, or by mail at a meeting called for the purpose of voting on the plan, pursuant to reasonable notice and procedure as approved by the Commissioner. If the company is a life insurer, the right to vote may be limited, as its bylaws provide, to members whose policies are other than term or group policies and have been in effect for more than one year.
- (3) Each policyholder's equity in the insurer is determinable under a fair and reasonable formula approved by the Commissioner. The equity shall be based upon the insurer's entire statutory surplus after deducting certificates of contribution, guaranty capital certificates, and similar evidences of indebtedness included in an insurer's statutory surplus.
- (4) The policyholders entitled to vote on the plan and participate in the purchase of stock and distribution of assets include all policyholders on the date the plan was adopted by the insurer's board of directors.
- (5) The plan provides that each policyholder specified in subdivision (4) of this subsection receives a preemptive right to acquire a proportionate part of all of the proposed capital stock of the insurer or of all of the stock of a corporation affiliated with the insurer within a designated reasonable period as the part is determinable under the plan of conversion; and to apply toward the purchase of the stock the amount of the policyholder's equity in the insurer under subdivision (3) of this subsection. The plan must provide for an equitable distribution of fractional interests.
- (6) The plan provides for payment to each policyholder of the policyholder's entire equity in the insurer; with that payment to be applied toward the purchase of stock to which the policyholder is entitled preemptively or to be made in cash, or both. The cash payment may not exceed fifty percent (50%) of each policyholder's equity. The stock purchased, together with the cash payment, if any, shall constitute full payment and discharge of the policyholder's equity as an owner of the mutual insurer.

- (7) Shares are to be offered to policyholders at a price not greater than that of shares to be subsequently offered to others.
- (8) The Commissioner finds that the insurer's management has not, through reduction of volume of new business written, through policy cancellations, or through any other means, sought to (i) reduce, limit, or affect the number or identity of the insurer's members entitled to participate in the plan or (ii) secure for the individuals constituting management any unfair advantage through the plan.
- (9) The plan, when completed, provides that the insurer's capital and surplus are not less than the minimum required of a domestic stock insurer transacting the same kinds of insurance, are reasonable in relation to the insurer's outstanding liabilities, and are adequate to meet its financial needs.

(c) With respect to an insurer with a guaranty capital, the conversion plan shall be approved by a vote of not less than two-thirds of the insurer's guaranty capital shareholders and policyholders as provided for in subdivision (b)(2) of this section. The plan may provide for the issuance of stock in exchange for outstanding guaranty capital shares at their redemption value subject to the conditions in subsection (b) of this section.

(d) The Commissioner may schedule a public hearing on the proposed conversion plan.

(e) The Commissioner may retain, at the mutual insurer's expense, any attorneys, actuaries, economists, accountants, or other experts not otherwise a part of the Commissioner's staff as may be reasonably necessary to assist the Commissioner in reviewing the proposed conversion plan.

(f) The corporate existence of the mutual company continues in the stock company created under this section. All assets, rights, franchises, and interests of the former mutual insurer, in and to real or personal property, are deemed to be transferred to and vested in the stock insurer, without any other deed or transfer; and the stock insurer simultaneously assumes all of the obligations and liabilities of the former mutual insurer.

(g) No director, officer, or employee of the insurer shall receive:

- (1) Any fee, commission, compensation, or other valuable consideration for aiding, promoting, or assisting in the conversion of the mutual insurer to a domestic stock insurer, other than compensation paid to any director, officer, or employee of the insurer in the ordinary course of business;
or
- (2) Any distribution of the assets, surplus, or capital of the insurer as part of a conversion.

(h) The Commissioner may adopt rules to carry out the provisions of this section."

PART VII. HOMEOWNER ASSOCIATION REFUNDS.

Section 7. G.S. 55A-13-02(b) reads as rewritten:

"(b) Subject to the provisions of subsection (d) of this section, (i) a section:

(1) A corporation may make distributions to any entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section and that upon dissolution shall distribute its assets to a charitable or religious corporation, the United States, a state or an entity that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or any successor section, and (ii) any section.

(2) Any corporation other than a charitable or religious corporation may make distributions to any domestic or foreign corporation.

(3) Except as otherwise prohibited by statute, a corporation not operated for profit, the membership of which is limited to the owners or occupants of real property in a condominium, cooperative housing corporation, or other real property development, having as its primary purposes the management, operation, preservation, maintenance, and repair of common areas and improvements upon the real property owned by the members and the corporation or organization, may make distribution to its members of excess or surplus membership dues, fees, or assessments remaining after the payment of or provisions for common expenses and any prepayment of reserves; provided that these distributions are in proportion to the dues, fees, or assessments collected from the members."

PART VIII. EFFECTIVE DATE.

Section 8. Section 6 of this act becomes effective October 1, 1999. The remainder of this act becomes effective December 15, 1999, and applies to mergers, consolidations, or conversions effective on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 8:50 p.m. on the 4th day of August, 1999.

S.B. 888

SESSION LAW 1999-370

AN ACT TO AMEND THE LAWS REGARDING CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95 reads as rewritten:

"§ 90-95. *Violations; penalties.*

(a) Except as authorized by this Article, it is unlawful for any person:

- (1) To manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver, a controlled substance;
- (2) To create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance;
- (3) To possess a controlled substance.

(b) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(1) with respect to:

- (1) A controlled substance classified in Schedule I or II shall be punished as a Class H felon, except that the sale of a controlled substance classified in Schedule I or II shall be punished as a Class G felon;
- (2) A controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class I felon, except that the sale of a controlled substance classified in Schedule III, IV, V, or VI shall be punished as a Class H felon. The transfer of less than 5 grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).

(c) Any person who violates G.S. 90-95(a)(2) shall be punished as a Class I felon.

(d) Except as provided in subsections (h) and (i) of this section, any person who violates G.S. 90-95(a)(3) with respect to:

- (1) A controlled substance classified in Schedule I shall be punished as a Class I felon;
- (2) A controlled substance classified in Schedule II, III, or IV shall be guilty of a Class 1 misdemeanor. If the controlled substance exceeds four tablets, capsules, or other dosage units or equivalent quantity of hydromorphone or if the quantity of the controlled substance, or combination of the controlled substances, exceeds one hundred tablets, capsules or other dosage units, or equivalent quantity, the violation shall be punishable as a Class I felony. If the controlled substance is methamphetamine, amphetamine, phencyclidine, or cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocanized coca leaves or any extraction of coca leaves which does not contain cocaine or ecgonine), the violation shall be punishable as a Class I felony.
- (3) A controlled substance classified in Schedule V shall be guilty of a Class 2 misdemeanor;
- (4) A controlled substance classified in Schedule VI shall be guilty of a Class 3 misdemeanor, but any sentence of imprisonment imposed must be suspended and the judge

may not require at the time of sentencing that the defendant serve a period of imprisonment as a special condition of probation. If the quantity of the controlled substance exceeds one-half of an ounce (avoirdupois) of marijuana or one-twentieth of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, the violation shall be punishable as a Class 1 misdemeanor. If the quantity of the controlled substance exceeds one and one-half ounces (avoirdupois) of marijuana or three-twentieths of an ounce (avoirdupois) of the extracted resin of marijuana, commonly known as hashish, or if the controlled substance consists of any quantity of synthetic tetrahydrocannabinols or tetrahydrocannabinols isolated from the resin of marijuana, the violation shall be punishable as a Class I felony.

(d1) Except as authorized by this Article, it is unlawful for any person to:

- (1) Possess an immediate precursor chemical with intent to manufacture a controlled substance; or
- (2) Possess or distribute an immediate precursor chemical knowing, or having reasonable cause to believe, that the immediate precursor chemical will be used to manufacture a controlled substance.

Any person who violates this subsection shall be punished as a Class H felon.

(d2) The immediate precursor chemicals to which subsection (d1) of this section applies are those immediate precursor chemicals designated by the Commission pursuant to its authority under G.S. 90-88, and the following (until otherwise specified by the Commission):

- ~~(1) Anthranilic acid.~~
- ~~(1) Anhydrous ammonia.~~
- ~~(1a) Anthranilic acid.~~
- ~~(2) Benzyl cyanide.~~
- ~~(3) Chloroephedrine.~~
- ~~(4) Chloropseudoephedrine.~~
- ~~(5) D-lysergic acid.~~
- ~~(6) Ephedrine.~~
- ~~(7) Ergonovine maleate.~~
- ~~(8) Ergotamine tartrate.~~
- ~~(9) Ethyl Malonate.~~
- ~~(10) Ethylamine.~~
- ~~(10a) Iodine.~~
- ~~(11) Isosafrole.~~
- ~~(11a) Lithium.~~
- ~~(12) Malonic acid.~~
- ~~(13) Methylamine.~~
- ~~(14) N-acetylanthranilic acid.~~
- ~~(15) N-ethylephedrine.~~
- ~~(16) N-ethylepseudoephedrine.~~
- ~~(17) N-methylephedrine.~~

- (18) N-methylpseudoephedrine.
- (19) Norpseudoephedrine.
- (20) Phenyl-2-propane.
- (21) Phenylacetic acid.
- (22) Phenylpropanolamine.
- (23) Piperidine.
- (24) Piperonal.
- (25) Propionic anhydride.
- (26) Pseudoephedrine.
- (27) Pyrrolidine.
- (27a) Red phosphorous.
- (28) Saffrole.
- (28a) Sodium.
- (29) Thionylchloride.

(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

- (1), (2) Repealed by Session Laws 1979, c. 760, s. 5.
- (3) If any person commits a Class 1 misdemeanor under this Article and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon. The prior conviction used to raise the current offense to a Class I felony shall not be used to calculate the prior record level.
- (4) If any person commits a Class 2 misdemeanor, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 1 misdemeanor. The prior conviction used to raise the current offense to a Class 1 misdemeanor shall not be used to calculate the prior conviction level.
- (5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age but more than 13 years of age or a pregnant female shall be punished as a Class D felon. Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person who is 13 years of age or younger shall be punished as a Class C felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant.
- (6) For the purpose of increasing punishment under G.S. 90-95(e)(3) and (e)(4), previous convictions for offenses shall be counted by the number of separate trials at which final

convictions were obtained and not by the number of charges at a single trial.

- (7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a Class 2 misdemeanor.
- (8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1).
- (9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class H felony.

(f) Any person convicted of an offense or offenses under this Article who is sentenced to an active term of imprisonment that is less than the maximum active term that could have been imposed may, in addition, be sentenced to a term of special probation. Except as indicated in this subsection, the administration of special probation shall be the same as probation. The conditions of special probation shall be fixed in the same manner as probation, and the conditions may include requirements for rehabilitation treatment. Special probation shall follow the active sentence. No term of special probation shall exceed five years. Special probation may be revoked in the same manner as probation; upon revocation, the original term of imprisonment may be increased by no more than the difference between the active term of imprisonment actually served and the maximum active term that could have been imposed at trial for the offense or offenses for which the person was convicted, and the resulting term of imprisonment need not be diminished by the time spent on special probation.

(g) Whenever matter is submitted to the North Carolina State Bureau of Investigation Laboratory, the Charlotte, North Carolina, Police Department Laboratory or to the Toxicology Laboratory, Reynolds Health Center, Winston-Salem for chemical analysis to determine if the matter is or contains a controlled substance, the report of that analysis certified to upon a form approved by the Attorney General by the person performing the analysis shall be admissible without further authentication in all proceedings in the district court and superior court divisions of the General Court of Justice as evidence of the identity, nature, and quantity of the matter analyzed. Provided, however, that a report is admissible in a criminal

proceeding in the superior court division or in an adjudicatory hearing in juvenile court in the district court division only if:

- (1) The State notifies the defendant at least 15 days before trial of its intention to introduce the report into evidence under this subsection and provides a copy of the report to the defendant, and
- (2) The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the report into evidence.

Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the report.

(g1) Procedure for establishing chain of custody without calling unnecessary witnesses. --

- (1) For the purpose of establishing the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

- (2) The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received. The statement may be placed on the same document as the report provided for in subsection (g) of this section.

- (3) The provisions of this subsection may be utilized by the State only if:

- a. The State notifies the defendant at least 15 days before trial of its intention to introduce the statement into evidence under this subsection and provides the defendant with a copy of the statement, and
- b. The defendant fails to notify the State at least five days before trial that the defendant objects to the introduction of the statement into evidence.

- (4) Nothing in this subsection precludes the right of any party to call any witness or to introduce any evidence supporting or contradicting the evidence contained in the statement.

(h) Notwithstanding any other provision of law, the following provisions apply except as otherwise provided in this Article.

- (1) Any person who sells, manufactures, delivers, transports, or possesses in excess of 10 pounds (avoirdupois) of marijuana shall be guilty of a felony which felony shall be known as "trafficking in marijuana" and if the quantity of such substance involved:

- a. Is in excess of 10 pounds, but less than 50 pounds, such person shall be punished as a Class H felon and shall be sentenced to a minimum term of 25 months and a maximum term of 30 months in the State's prison and shall be fined not less than five thousand dollars (\$5,000);
 - b. Is 50 pounds or more, but less than 2,000 pounds, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars (\$25,000);
 - c. Is 2,000 pounds or more, but less than 10,000 pounds, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars (\$50,000);
 - d. Is 10,000 pounds or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars (\$200,000).
- (2) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of methaqualone, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in methaqualone" and if the quantity of such substance or mixture involved:
- a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars (\$25,000);
 - b. Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars (\$50,000);
 - c. Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's

prison and shall be fined not less than two hundred thousand dollars (\$200,000).

- (3) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or any coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, and any salt, isomer, salts of isomers, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances (except decocainized coca leaves or any extraction of coca leaves which does not contain cocaine) or any mixture containing such substances, shall be guilty of a felony, which felony shall be known as "trafficking in cocaine" and if the quantity of such substance or mixture involved:
- a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than fifty thousand dollars (\$50,000);
 - b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than one hundred thousand dollars (\$100,000);
 - c. Is 400 grams or more, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined at least two hundred fifty thousand dollars (\$250,000).
- ~~(3a) Any person who sells, manufactures, delivers, transports, or possesses 1,000 tablets, capsules or other dosage units, or the equivalent quantity, or more of amphetamine, its salts, optical isomers, and salts of its optical isomers or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in amphetamine" and if the quantity of such substance or mixture involved:~~
- ~~a. Is 1,000 or more dosage units, or equivalent quantity, but less than 5,000 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars (\$25,000);~~

- b. ~~Is 5,000 or more dosage units, or equivalent quantity, but less than 10,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars (\$50,000);~~
 - c. ~~Is 10,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars (\$200,000).~~
- (3b) Any person who sells, manufactures, delivers, transports, or possesses 28 grams or more of methamphetamine or amphetamine shall be guilty of a felony which felony shall be known as 'trafficking in methamphetamine' methamphetamine or amphetamine and if the quantity of such substance or mixture involved:
- a. Is 28 grams or more, but less than 200 grams, such person shall be punished as a ~~Class G~~ Class F felon and shall be sentenced to a minimum term of ~~35~~ 70 months and a maximum term of ~~42~~ 84 months in the State's prison and shall be fined not less than fifty thousand dollars (\$50,000);
 - b. Is 200 grams or more, but less than 400 grams, such person shall be punished as a ~~Class F~~ Class E felon and shall be sentenced to a minimum term of ~~70~~ 90 months and a maximum term of ~~84~~ 117 months in the State's prison and shall be fined not less than one hundred thousand dollars (\$100,000);
 - c. Is 400 grams or more, such person shall be punished as a ~~Class D~~ Class C felon and shall be sentenced to a minimum term of ~~175~~ 225 months and a maximum term of ~~219~~ 279 months in the State's prison and shall be fined at least two hundred fifty thousand dollars (\$250,000).
- (4) Any person who sells, manufactures, delivers, transports, or possesses four grams or more of opium or opiate, or any salt, compound, derivative, or preparation of opium or opiate (except apomorphine, nalbuphine, analoxone and naltrexone and their respective salts), including heroin, or any mixture containing such substance, shall be guilty of a felony which felony shall be known as "trafficking in opium or heroin" and if the quantity of such controlled substance or mixture involved:
- a. Is four grams or more, but less than 14 grams, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a

- maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars (\$50,000);
- b. Is 14 grams or more, but less than 28 grams, such person shall be punished as a Class E felon and shall be sentenced to a minimum term of 90 months and a maximum term of 117 months in the State's prison and shall be fined not less than one hundred thousand dollars (\$100,000);
 - c. Is 28 grams or more, such person shall be punished as a Class C felon and shall be sentenced to a minimum term of 225 months and a maximum term of 279 months in the State's prison and shall be fined not less than five hundred thousand dollars (\$500,000).
- (4a) Any person who sells, manufactures, delivers, transports, or possesses 100 tablets, capsules, or other dosage units, or the equivalent quantity, or more, of Lysergic Acid Diethylamide, or any mixture containing such substance, shall be guilty of a felony, which felony shall be known as "trafficking in Lysergic Acid Diethylamide". If the quantity of such substance or mixture involved:
- a. Is 100 or more dosage units, or equivalent quantity, but less than 500 dosage units, or equivalent quantity, such person shall be punished as a Class G felon and shall be sentenced to a minimum term of 35 months and a maximum term of 42 months in the State's prison and shall be fined not less than twenty-five thousand dollars (\$25,000);
 - b. Is 500 or more dosage units, or equivalent quantity, but less than 1,000 dosage units, or equivalent quantity, such person shall be punished as a Class F felon and shall be sentenced to a minimum term of 70 months and a maximum term of 84 months in the State's prison and shall be fined not less than fifty thousand dollars (\$50,000);
 - c. Is 1,000 or more dosage units, or equivalent quantity, such person shall be punished as a Class D felon and shall be sentenced to a minimum term of 175 months and a maximum term of 219 months in the State's prison and shall be fined not less than two hundred thousand dollars (\$200,000).
- (5) Except as provided in this subdivision, a person being sentenced under this subsection may not receive a suspended sentence or be placed on probation. The sentencing judge may reduce the fine, or impose a prison term less than the applicable minimum prison term provided by this subsection, or suspend the prison term imposed and place a person on probation when such person has, to the best of his knowledge, provided substantial

assistance in the identification, arrest, or conviction of any accomplices, accessories, co-conspirators, or principals if the sentencing judge enters in the record a finding that the person to be sentenced has rendered such substantial assistance.

- (6) Sentences imposed pursuant to this subsection shall run consecutively with and shall commence at the expiration of any sentence being served by the person sentenced hereunder.

(i) The penalties provided in subsection (h) of this section shall also apply to any person who is convicted of conspiracy to commit any of the offenses described in subsection (h) of this section."

Section 2. G.S. 90-95.3 reads as rewritten:

"§ 90-95.3. *Restitution to law-enforcement agencies for undercover purchases; restitution for drug ~~analyses~~, analyses; restitution for seizure and cleanup of clandestine laboratories.*

(a) When any person is convicted of an offense under this Article, the court may order him to make restitution to any law-enforcement agency for reasonable expenditures made in purchasing controlled substances from him or his agent as part of an investigation leading to his conviction.

(b) When any person is convicted of an offense under this Article, the court may order him to make restitution in the sum of one hundred dollars (\$100.00) to the State of North Carolina for the expense of analyzing any controlled substance possessed by him or his agent as part of an investigation leading to his conviction. Any funds received under this subsection shall be deposited in the General Fund.

(c) When any person is convicted of an offense under this Article involving the manufacture of controlled substances, the court must order the person to make restitution for the actual cost of cleanup to the law enforcement agency that cleaned up any clandestine laboratory used to manufacture the controlled substances, including personnel overtime, equipment, and supplies."

Section 3. G.S. 90-91 reads as rewritten:

"§ 90-91. *Schedule III controlled substances.*

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

- (a) Repealed by Session Laws 1973, c. 540, s. 5.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
 2. Chlorhexadol.
 3. Repealed by Session Laws 1993, c. 319, s. 5.
 4. Lysergic acid.
 5. Lysergic acid amide.
 6. Methypylon.
 7. Sulfondiethylmethane.
 8. Sulfonethylmethane.
 9. Sulfonmethane.
 - 9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-c][1,4]-diazepin-7(1H)-one. flupyrzapon.
 10. Any compound, mixture or preparation containing
 - (i) Amobarbital.
 - (ii) Secobarbital.
 - (iii) Pentobarbital.or any salt thereof and one or more active ingredients which are not included in any other schedule.
 11. Any suppository dosage form containing
 - (i) Amobarbital.
 - (ii) Secobarbital.
 - (iii) Pentobarbital.or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.
- (c) Nalorphine.
- (d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:
1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
 2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
 4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not

having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.
2. Chlorphentermine.
3. Clortermine.
4. Repealed by Session Laws 1987, c. 412, s. 10.
5. Phendimetrazine.

(k) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone deconoate,
6. Testosterone propionate,
7. Chorionic gonadotropin,
8. Boldenone,
9. Chlorotestosterone (4-chlortestosterone),
10. Clostebol,
11. Dehydrochlormethyltestosterone,
12. Dibydrotestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebolone (formebolone),
16. Mesterolene,
17. Methandienone,
18. Methandranone,
19. Methandriol,
20. Methenolene,
21. Methyltestosterone,
22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,

28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone, and
32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(l) Ketamine."

Section 4. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 8:55 p.m. on the 4th day of August, 1999.

S.B. 929

SESSION LAW 1999-371

AN ACT TO REVISE THE ABATEMENT OF NUISANCE STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 19-1(a) reads as rewritten:

"(a) The erection, establishment, continuance, maintenance, use, ownership or leasing of any building or place for the purpose of assignation, prostitution, gambling, illegal possession or sale of alcoholic beverages, illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or illegal possession or sale of obscene or lewd matter, as defined in this Chapter, shall constitute a nuisance."

Section 2. G.S. 19-1.1 reads as rewritten:

"§ 19-1.1. *Definitions.*

As used in this Chapter relating to illegal possession or sale of obscene matter or to the other conduct prohibited in G.S. 19- 1, the following definitions shall apply:

(0.1) 'Breach of the peace' means repeated acts that disturb the public order including, but not limited to, homicide, assault, affray, communicating threats, unlawful possession of dangerous or deadly weapons, and discharging firearms.

(1) 'Knowledge' or 'knowledge of such nuisance' means having knowledge of the contents and character of the patently offensive

sexual conduct which appears in the lewd matter, or knowledge of the acts of ~~lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of narcotic drugs as defined in the North Carolina Controlled Substances Act, or prostitution which occur on the premises.~~ lewdness. With regard to nuisances involving assignation, prostitution, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of controlled substances as defined in the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the peace, evidence that the defendant knew or by the exercise of due diligence should have known of the acts or conduct constitutes proof of knowledge.

(2) 'Lewd matter' is synonymous with 'obscene matter' and means any matter:

- a. Which the average person, applying contemporary community standards, would find, when considered as a whole, appeals to the prurient interest; and
- b. Which depicts patently offensive representations of:
 1. Ultimate sexual acts, normal or perverted, actual or simulated;
 2. Masturbation, excretory functions, or lewd exhibition of the genitals or genital area;
 3. Masochism or sadism; or
 4. Sexual acts with a child or animal.

Nothing herein contained is intended to include or proscribe any writing or written material, nor to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, educational, or scientific value.

(3) 'Lewdness' is synonymous with obscenity and shall mean the act of selling, exhibiting or possessing for sale or exhibition lewd matter.

(4) 'Matter' means a motion picture film or a publication or both.

(5) 'Motion picture film' shall include any:

- a. Film or plate negative;
- b. Film or plate positive;
- c. Film designed to be projected on a screen for exhibition;
- d. Films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen;
- e. ~~Video tape~~ tape, compact disc, digital video disc, or any other medium used to electronically reproduce images on a screen.

(6) 'Person' means any individual, partnership, firm, association, corporation, or other legal entity.

- (7) 'Place' includes, but is not limited to, any building, structure or places, or any separate part or portion thereof, whether permanent or not, or the ground ~~itself, but excluding a private dwelling place not used for a profit, itself.~~
- (7a) 'Preserving the status quo' as used in G.S. 19-2.3 means returning conditions to the last actual, peaceable, lawful, and noncontested status which preceded the pending controversy and not allow the nuisance to continue.
- (7b) 'Prostitution' means offering in any manner or receiving of the body in return for a fee, for acts of vaginal intercourse, anal intercourse, fellatio, cunnilingus, masturbation, or physical contact with a person's genitals, pubic area, buttocks, or breasts, or other acts of sexual conduct offered or received for pay and sexual gratification.
- (8) 'Publication' shall include any book, magazine, pamphlet, illustration, photograph, picture, sound recording, or a motion picture film which is offered for sale or exhibited in a coin-operated machine.
- (9) ~~'Sale'~~ 'Sale of obscene or lewd matter' means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer or possession of, lewd matter.
- (10) 'Sale' as the term relates to proscribed acts other than sale of obscene or lewd matter shall have the same meaning as the term is defined in Chapter 18B and Chapter 90 of the General Statutes prohibiting the illegal sale of alcoholic beverages and controlled substances respectively.
- (11) 'Used for profit' shall mean any use of real or personal property to produce income in any manner, including, but not limited to, any commercial or business activities, or selling, leasing, or otherwise providing goods and services for profit."

Section 3. G.S. 19-1.2 reads as rewritten:

"§ 19-1.2. *Types of nuisances.*

The following are declared to be nuisances wherein obscene or lewd matter or other conduct prohibited in G.S. 19-1(a) is involved:

- (1) Any and every place in the State where lewd films are publicly exhibited as a predominant and regular course of business, or possessed for the purpose of such exhibition;
- (2) Any and every place in the State where a lewd film is publicly and repeatedly exhibited, or possessed for the purpose of such exhibition;

- (3) Any and every lewd film which is publicly exhibited, or possessed for such purpose at a place which is a nuisance under this Article;
- (4) Any and every place of business in the State in which lewd publications constitute a principal or substantial part of the stock in trade;
- (5) Any and every lewd publication possessed at a place which is a nuisance under this Article;
- (6) Every place which, as a regular course of business, is used for the purposes of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, and every such place in or upon which acts of lewdness, assignation, gambling, the illegal possession or sale of alcoholic beverages, the illegal possession or sale of ~~narcotic drugs~~ controlled substances as defined in the North Carolina Controlled Substances Act, or prostitution, are held or occur."

Section 4. G.S. 19-1.3 reads as rewritten:

"§ 19-1.3. *Personal property as a nuisance; knowledge of nuisance.*

The following are also declared to be nuisances, as personal property used in conducting and maintaining a nuisance under this Chapter:

- (1) All moneys paid as admission price to the exhibition of any lewd film found to be a nuisance;
- (2) All valuable consideration received for the sale of any lewd publication which is found to be a nuisance;
- (3) All money or other valuable ~~consideration~~ consideration, vehicles, conveyances, or other property received or used in gambling, prostitution, the illegal sale of alcoholic beverages or the illegal sale of substances proscribed under the North Carolina Controlled Substances Act, as well as the furniture and movable contents of a place used in connection with such prohibited conduct.

From and after service of a copy of the notice of hearing of the application for a preliminary injunction, provided for in G.S. 19-2.4 upon the place, or its manager, or acting manager, or person then in charge, all such parties are deemed to have knowledge of the contents of the restraining order and the use of the place occurring thereafter. Where the circumstantial proof warrants a determination that a person had knowledge of the nuisance prior to such service of process, the court may make such finding."

Section 5. G.S. 19-2.1 reads as rewritten:

"§ 19-2.1. *Action for abatement; injunction.*

Wherever a nuisance is kept, maintained, or exists, as defined in this Article, the Attorney General, district attorney, county, municipality, or any private citizen of the county may maintain a civil action in the name of the State of North Carolina to abate a nuisance

under this Chapter, perpetually to enjoin all persons from maintaining the same, and to enjoin the use of any structure or thing adjudged to be a nuisance under this Chapter; provided, however, that no private citizen may maintain such action where the alleged nuisance involves the illegal possession or sale of obscene or lewd matter.

Upon request from the Attorney General, district attorney, county or municipality, including the sheriff or chief of police of any county or municipality, the Alcohol Law Enforcement Division of the Department of Crime Control and Public Safety or any other law enforcement agency with jurisdiction may investigate alleged public nuisances and make recommendations regarding actions to abate the public nuisances.

If an action is instituted by a private person, the complainant shall execute a bond prior to the issuance of a restraining order or a temporary injunction, with good and sufficient surety to be approved by the court or clerk thereof, in the sum of not less than one thousand dollars (\$1,000), to secure to the party enjoined the damages he may sustain if such action is wrongfully brought, not prosecuted to final judgment, or is dismissed, or is not maintained, or if it is finally decided that the temporary restraining order or preliminary injunction ought not to have been granted. The party enjoined shall have recourse against said bond for all damages suffered, including damages to his property, person, or character and including reasonable attorney's fees incurred by him in making defense to said action. No bond shall be required of the prosecuting attorney, the Attorney General, county, or municipality, and no action shall be maintained against ~~the~~ any public official or public entity for the official action. entity, their employees, or agents for investigating or maintaining an action for abatement of a nuisance under the provisions of this Chapter."

Section 6. G.S. 19-2.3 reads as rewritten:

"§ 19-2.3. Temporary order restraining removal of personal property from premises; service; punishment.

Where such application for a preliminary injunction is made, the court may, on application of the complainant showing good cause, issue an ex parte temporary restraining order in accordance with G.S. 1A-1, Rule 65(b), preserving the status quo and restraining the defendant and all other persons from removing or in any manner interfering with any evidence specifically described, or in any manner removing or interfering with the personal property and contents of the place where such nuisance is alleged to exist, until the decision of the court granting or refusing such preliminary injunction and until further order of the court thereon. Nothing herein shall be interpreted to allow the prior restraint of the distribution of any matter or the sale of the stock in trade, but an inventory and full accounting of all business transactions involving alleged obscene or lewd matter thereafter shall be required. The inventory provisions provided by this section shall not apply to nuisances occurring at a private dwelling

place unless the court finds the private dwelling place is used for profit.

Any person, firm, or corporation enjoined pursuant to this section may file with the court a motion to dissolve any temporary restraining order. Such a motion shall be heard within 24 hours of the time a copy of the motion is served on the complaining party, or on the next day the superior courts are open in the district, whichever is later. At such hearing the complaining party shall have the burden of showing why the restraining order should be continued.

In the event a temporary restraining order is issued, it may be served in accordance with the provisions of G.S. 1A-1, Rule 4, or may be served by handing to and leaving a copy of such order with any person in charge of such place or residing therein, or by posting a copy thereof in a conspicuous place at or upon one or more of the principal doors or entrances to such place, or by such service under said Rule 4, delivery and posting. The officer serving such temporary restraining order shall forthwith enter upon the property and make and return into court an inventory of the personal property and contents situated in and used in conducting or maintaining such nuisance.

Any violation of such temporary restraining order is a contempt of court, and where such order is posted, mutilation or removal thereof, while the same remains in force, is a contempt of court, provided such posted order contains therein a notice to that effect."

Section 7. G.S. 19-2.5 reads as rewritten:

"§ 19-2.5. Hearing on the preliminary injunction; issuance.

If upon hearing, the allegations of the complaint are sustained to the satisfaction of the court, the court shall issue a preliminary injunction restraining the defendant and any other person from continuing the nuisance and effectually enjoining its use thereafter for the purpose of conducting any such nuisance. The court may, in its discretion, order the closure of the property pending trial on the merits."

Section 8. G.S. 19-3(b) reads as rewritten:

"(b) In such action, an admission or finding of guilt of any person under the criminal laws against lewdness, assignation, prostitution, gambling, breaches of the peace, the illegal possession or sale of alcoholic beverages, or the illegal possession or sale of substances proscribed by the North Carolina Controlled Substances Act, at any such place, is admissible for the purpose of proving the existence of said nuisance, and is evidence of such nuisance and of knowledge of, and of acquiescence and participation therein, on the part of the person charged with maintaining said nuisance."

Section 9. G.S. 19-6 reads as rewritten:

"§ 19-6. Civil penalty; forfeiture; accounting; lien as to expenses of abatement; invalidation of lease.

Lewd matter is contraband, and there are no property rights therein. All personal property, including all money and other considerations, declared to be a nuisance under the provisions of G.S. 19-1.3 and other sections of this Article, are subject to forfeiture to the local government and are recoverable as damages in the county

wherein such matter is sold, exhibited or otherwise used. Such property including moneys may be traced to and shall be recoverable from persons who, under G.S. 19-2.4, have knowledge of the nuisance at the time such moneys are received by them.

Upon judgment against the defendant or defendants in legal proceedings brought pursuant to this Article, an accounting shall be made by such defendant or defendants of all moneys received by them which have been declared to be a nuisance under this Article. An amount equal to the sum of all moneys estimated to have been taken in as gross income from such unlawful commercial activity shall be forfeited to the general funds of the city and county governments wherein such activity took place, to be shared equally, as a forfeiture of the fruits of an unlawful enterprise, and as partial restitution for damages done to the public welfare; provided, however, that no provision of this Article shall authorize the recovery of any moneys or gross income received from the sale of any book, magazine, or exhibition of any motion picture prior to the issuance of a preliminary injunction. Where the action is brought pursuant to this Article, special injury need not be proven, and the costs of abatement are a lien on both the real and personal property used in maintaining the nuisance. Costs of abatement include, but are not limited to, reasonable attorney's fees and court costs.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located.

If it is judicially found after an adversary hearing pursuant to this Article that a tenant or occupant of a building or tenement, under a lawful title, uses such place for the purposes of lewdness, assignation, prostitution, gambling, sale or possession of illegal alcoholic beverages or substances proscribed under the North Carolina Controlled Substances Act, or repeated acts which create and constitute a breach of the peace, such use makes void the lease or other title under which he holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert and vest in such owner."

Section 10. G.S. 19-6.1 reads as rewritten:

"§ 19-6.1. *Forfeiture of real property.*

In all actions where a preliminary injunction, permanent injunction, or an order of abatement is issued pursuant to this Article in which the nuisance consists of or includes at least two prior occurrences within five years of the ~~illegal possession or sale of narcotic drugs as defined in G.S. 90-87(17),~~ manufacture, possession with intent to sell, or sale of controlled substances as defined by the North Carolina Controlled Substances Act, or two prior occurrences of the possession of any controlled substance included within Schedule I or II of that Act, the real property on which the nuisance exists or is maintained is subject to forfeiture in accordance with this section.

If all of the owners of the property are defendants in the action, the plaintiff, other than a plaintiff who is a private citizen, may request

forfeiture of the real property as part of the relief sought. If forfeiture is requested, and if jurisdiction over all defendant owners is established, upon judgment against the defendant or defendants, the court shall order forfeiture as follows:

- (1) If the court finds by clear and convincing evidence that all the owners either (i) have participated in maintaining the nuisance on the property, or (ii) prior to the action had written notice from the plaintiff prior to the action plaintiff, or any governmental agent or entity authorized to bring an action pursuant to this Chapter, that the nuisance existed or was maintained on the property and have not made good faith efforts to stop the nuisance from occurring or recurring, the court shall order that the property be forfeited;
- (2) If the court finds that one or more of the owners did not participate in maintaining the nuisance on the property or did not have written notice from the plaintiff prior to the action that the nuisance existed or was maintained on the property, the court shall not order forfeiture of the property immediately upon judgment. However, if after judgment and an order directing the defendants to abate the nuisance, the nuisance either continues, begins again, or otherwise recurs within five years of the order and the defendants have not made good faith efforts to abate the nuisance, the plaintiff may petition the court for forfeiture. Upon such petition, the defendant owner or owners shall be given notice and an opportunity to appear and be heard at a hearing to determine the continuation or recurrence of the nuisance. If, in this hearing (i) the plaintiff establishes by clear and convincing evidence that the nuisance, with the owner's or owners' knowledge, has either continued, begun again, or otherwise recurred, and (ii) the defendants fail to establish that they have made and are continuing to make good faith efforts to abate the nuisance, the court shall order that the property be forfeited.

For the purposes of this section, factors which may evidence good faith by the defendant to abate the nuisance include but are not limited to (i) cooperation with law enforcement authorities to abate the nuisance; (ii) lease restrictions prohibiting the illegal possession or sale of narcotic drugs and an action to evict a tenant for any violations of the lease provision; (iii) a criminal record check of prospective tenants; and (iv) reference checks of prior residency of prospective tenants.

Upon an order of forfeiture, title to the property shall vest in the school board of the county in which the property is located. If at the time of forfeiture the property is subject to a lien or security interest of a person not participating in the maintenance of the nuisance, the school board shall either (i) pay an amount to that person satisfying the lien or security interest; or (ii) sell the property and satisfy the

lien or security interest from the proceeds of the ~~sale and additional monies, if necessary, sale.~~ If the property is not subject to any lien or security interest at the time of forfeiture, the school board may hold, maintain, lease, sell, or otherwise dispose of the property as it sees fit.

Upon the filing of the action, the plaintiff may file a notice of lis pendens in the official records of the county where the property is located. If the plaintiff files a notice of lis pendens, any person purchasing or obtaining an interest in the property thereafter shall be considered to have notice of the alleged nuisance, and shall forfeit his interest in the property upon a judgment of forfeiture in favor of the plaintiff.

If in the same action in which real property is forfeited the court finds that a tenant or occupant of the property participated in or maintained the nuisance, the lease or other title under which the tenant or occupant holds is void, and the right of possession vests in the new owner. Upon forfeiture, the rights of innocent tenants occupying separate units of the property who were not involved in the nuisance at the time the action was filed shall be in accordance with any relevant lease provisions in effect at the time or, in the absence of relevant lease provisions, in accordance with the law applying to other tenants or occupants of property that is sold, foreclosed upon, or otherwise obtained by new owners."

Section 11. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:00 p.m. on the 4th day of August, 1999.

S.B. 966

SESSION LAW 1999-372

AN ACT RELATING TO THE AUTHORITY TO ENTER INTO CONTRACTS FOR CONDUCTING MUNICIPAL AND COUNTY BUILDING INSPECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-353 reads as rewritten:

"§ 153A-353. *Joint inspection department; other arrangements.*

A county may enter into and carry out contracts with one or more other counties or cities under which the parties agree to create and support a joint inspection department for enforcing those State and local laws and local ordinances and regulations specified in the agreement. The governing bodies of the contracting units may make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a county may designate an inspector from another county or from a city to serve as a member of the county inspection department, with the approval of the governing body of the other county or ~~city, or may city.~~ A county may also contract with an individual who is not a city or county employee but

who holds one of the applicable certificates as provided in G.S. 153A-351.1 or ~~G.S. 160A-411.1~~, G.S. 160A-411.1 or with the employer of an individual who holds one of the applicable certificates as provided in G.S. 153A-351.1 or G.S. 160A-411.1. Contracts with an individual or with the employer of an individual who is not an employee of another county or a city may be entered into only for specifically designated projects. The inspector, if designated from another county or city under this section, while exercising the duties of the position, is a county employee. The county shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the county as it does for an individual who is an employee of the county. The company or individual with whom the county contracts shall have errors and omissions and other insurance coverage acceptable to the county."

Section 2. G.S. 153A-355 reads as rewritten:

"§ 153A-355. Conflicts of interest.

Unless he or she is the owner of the building, no member of an inspection department ~~or other individual contracting with a county to conduct inspections~~ shall be financially interested or employed by a business that is financially interested in furnishing labor, material, or appliances for the construction, alteration, or maintenance of any building within the county's territorial jurisdiction or any part or system thereof, or in making plans or specifications therefor. No member of any inspection department or other individual or an employee of a company contracting with a county to conduct inspections may engage in any work that is inconsistent with his or her duties or with the interest of the county, county, as determined by the county. The county must find a conflict of interest if any of the following is the case:

- (1) If the individual, company, or employee of a company contracting to perform inspections for the county has worked for the owner, developer, contractor, or project manager of the project to be inspected within the last two years.
- (2) If the individual, company, or employee of a company contracting to perform inspections for the county is closely related to the owner, developer, contractor, or project manager of the project to be inspected.
- (3) If the individual, company, or employee of a company contracting to perform inspections for the county has a financial or business interest in the project to be inspected."

Section 3. G.S. 160A-413 reads as rewritten:

"§ 160A-413. Joint inspection department; other arrangements.

A city council may enter into and carry out contracts with another city, county, or combination thereof under which the parties agree to create and support a joint inspection department for the enforcement of State and local laws specified in the agreement. The governing boards of the contracting parties are authorized to make any necessary appropriations for this purpose.

In lieu of a joint inspection department, a city council may designate an inspector from any other city or county to serve as a member of its inspection department with the approval of the governing body of the other city or ~~county, or may county.~~ A city may also contract with an individual who is not a city or county employee but who holds one of the applicable certificates as provided in G.S. 160A-411.1 or G.S. 153A-351.1. G.S. 153A-351.1 or with the employer of an individual who holds one of the applicable certificates as provided in G.S. 160A-411.1 or G.S. 153A-351.1. Contracts with an individual or with the employer of an individual who is not an employee of another city or a county may be entered into only for specifically designated projects. The inspector, if designated from another city or county under this section, shall, while exercising the duties of the position, be considered a municipal employee. The city shall have the same potential liability, if any, for inspections conducted by an individual who is not an employee of the city as it does for an individual who is an employee of the city. The company or individual with whom the city contracts shall have errors and omissions and other insurance coverage acceptable to the city.

The city council of any city may request the board of county commissioners of the county in which the city is located to direct one or more county building inspectors to exercise their powers within part or all of the city's jurisdiction, and they shall thereupon be empowered to do so until the city council officially withdraws its request in the manner provided in G.S. 160A-360(g)."

Section 4. G.S. 160A-415 reads as rewritten:

"§ 160A-415. *Conflicts of interest.*

No member of an inspection department ~~or other individual contracting with a city to conduct inspections~~ shall be financially interested or employed by a business that is financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building within the city's jurisdiction or any part or system thereof, or in the making of plans or specifications therefor, unless he is the owner of the building. No member of an inspection department or other individual or an employee of a company contracting with a city to conduct inspections shall engage in any work that is inconsistent with his or her duties or with the interest of the city, city, as determined by the city. The city must find a conflict of interest if any of the following is the case:

- (1) If the individual, company, or employee of a company contracting to perform inspections for the city has worked for the owner, developer, contractor, or project manager of the project to be inspected within the last two years.
- (2) If the individual, company, or employee of a company contracting to perform inspections for the city is closely related to the owner, developer, contractor, or project manager of the project to be inspected.

- (3) If the individual, company, or employee of a company contracting to perform inspections for the city has a financial or business interest in the project to be inspected.

The provisions of this section do not apply to a firefighter whose primary duties are fire suppression and rescue, but who engages in some fire inspection activities as a secondary responsibility of the firefighter's employment as a firefighter, except no firefighter may inspect any work actually done, or materials or appliances supplied, by the firefighter or the firefighter's business within the preceding six years."

Section 5. G.S. 143-151.8 reads as rewritten:

"§ 143-151.8. *Definitions.*

(a) As used in this Article, unless the context otherwise requires:

- (1) "Board" means the North Carolina Code Officials Qualification Board.
- (2) "Code" means the North Carolina State Building Code and related local building rules approved by the Building Code Council heretofore or hereinafter enacted, adopted or approved pursuant to G.S. 143-138.
- (3) "Code enforcement" means the examination and approval of plans and specifications, or the inspection of the manner of construction, workmanship, and materials for construction of buildings and structures and components thereof, or the enforcement of fire code regulations as an employee of the State or local government ~~or other~~ as an individual contracting with the State or a local government to conduct inspections, or as an individual who is employed by a company contracting with a county or a city to conduct inspections, except an employee of the State Department of Labor engaged in the administration and enforcement of those sections of the Code which pertain to boilers and elevators, to assure compliance with the State Building Code and related local building rules.
- (4) "Local inspection department" means the agency or agencies of local government with authority to make inspections of buildings and to enforce the Code and other laws, ordinances, and rules enacted by the State and the local government which establish standards and requirements applicable to the construction, alteration, repair, or demolition of buildings, and conditions that may create hazards of fire, explosion, or related hazards.
- (5) "Qualified Code-enforcement official" means a person qualified under this Article to engage in the practice of Code enforcement.

(b) For purposes of this Article, the population of a city or county shall be determined according to the most current federal census, unless otherwise specified."

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:03 p.m. on the 4th day of August, 1999.

S.B. 977

SESSION LAW 1999-373

AN ACT TO ENHANCE THE AUTHORITY OF THE SCHOOL IMPROVEMENT TEAM WITH REGARD TO THE SCHOOL CALENDAR AND TO REQUIRE PRINCIPALS AND LOCAL BOARDS OF EDUCATION TO ESTABLISH SCHOOL IMPROVEMENT TEAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-84.2(a) reads as rewritten:

"(a) School Calendar. -- Each local board of education shall adopt a school calendar consisting of 220 days all of which shall fall within the fiscal year. A school calendar shall include the following:

- (1) A minimum of 180 days and 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather.
- (2) A minimum of 10 annual vacation leave days.
- (3) The same or an equivalent number of legal holidays occurring within the school calendar as those designated by the State Personnel Commission for State employees.
- (4) ~~Ten~~ Eight days, as designated by the local board, for use as teacher workdays, additional instructional days, or other lawful purposes. A local board may delegate to the individual schools some or all of the ~~10~~ eight days to schedule under subdivision (5) of this subsection. A local board may schedule different purposes for different personnel on any given day and is not required to schedule the same dates for all personnel.
- (5) The remaining days ~~shall be scheduled by each individual school by the school's principal in consultation with the school improvement team. Days may be scheduled~~ shall be scheduled by each individual school by the school's principal in consultation with the school improvement team. Days may be scheduled for any of the purposes allowed under subdivision (4) of this subsection. Before scheduling these days, the principal shall

work with the school improvement team to determine the days to be scheduled and the purposes for which they should be scheduled. Days may be scheduled and planned for different purposes for different personnel and there is no requirement to schedule the same dates for all personnel. However, if during the last two years the local school administrative unit has made up an average of at least eight days for school closing because of inclement weather, the local board may designate up to two of these days as additional make-up days to be scheduled after the last day of student attendance.

Local boards and individual schools are encouraged to use the calendar flexibility in order to meet the annual performance standards set by the State Board. Local boards of education shall consult with parents and the employed public school personnel in the development of the school calendar.

Local boards and individual schools shall give teachers at least 14 calendar days' notice before requiring a teacher to work instead of taking vacation leave on days scheduled in accordance with subdivision (4) or (5) of this subsection. A teacher may elect to waive this notice requirement for one or more such days."

Section 2. G.S. 115C-288 is amended by adding the following new subsection to read:

"(1) To Establish School Improvement Teams. -- Each school year, the principal shall ensure that a school improvement team is established under G.S. 115C-105.27 for the purpose of developing, reviewing, and revising a school improvement plan."

Section 3. G.S. 115C-47 is amended by adding the following new subdivision to read:

"(38) To Establish School Improvement Teams. -- Local boards shall adopt a policy to ensure that each principal has established a school improvement team under G.S. 115C-105.27 and in accordance with G.S. 115C-288(1). Local boards shall direct the superintendent or the superintendent's designee to provide appropriate guidance to principals to ensure that these teams are established and that the principals work together with these teams to develop, review, and amend school improvement plans for their schools."

Section 4. The Joint Legislative Education Oversight Committee shall study issues related to the development of a school calendar including whether there is sufficient flexibility under the current law to deal with school closings due to inclement weather and emergency situations involving individual schools. The Joint Legislative Education Oversight Committee may report its findings and any recommendations to the 2000 Regular Session of the 1999 General Assembly, or to the 2001 General Assembly.

Section 5. This act becomes effective July 1, 1999, and applies to all school years beginning with the 2000-2001 school year.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:15 p.m. on the 4th day of August, 1999.

S.B. 995

SESSION LAW 1999-374

AN ACT ESTABLISHING A TESTIMONIAL PRIVILEGE FOR
POLICE PEER SUPPORT GROUP COUNSELORS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 8 of the General Statutes is amended by adding a new section to read:

"§ 8-53.10. Peer support group counselors.

(a) Definitions. The following definitions apply in this section:

- (1) Client law enforcement employee. -- Any law enforcement employee or a member of his or her immediate family who is in need of and receives peer counseling services offered by the officer's employing law enforcement agency.
- (2) Immediate family. -- A spouse, child, stepchild, parent, or stepparent.
- (3) Peer counselor. -- Any law enforcement officer or civilian employee of a law enforcement agency who:
 - a. Has received training to provide emotional and moral support and counseling to client law enforcement employees and their immediate families; and
 - b. Was designated by the sheriff, police chief, or other head of a law enforcement agency to counsel a client law enforcement employee.
- (4) Privileged communication. -- Any communication made by a client law enforcement employee or a member of the client law enforcement employee's immediate family to a peer counselor while receiving counseling.

(b) A peer counselor shall not disclose any privileged communication that was necessary to enable the counselor to render counseling services unless one of the following apply:

- (1) The disclosure is authorized by the client or, if the client is deceased, the disclosure is authorized by the client's executor, administrator, or in the case of unadministered estates, the client's next of kin.
 - (2) The disclosure is necessary to the proper administration of justice and, subject to G.S. 8-53.6, is compelled by a resident or presiding judge. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.
- (c) The privilege established by this section shall not apply:
- (1) If the peer counselor was an initial responding officer, a witness, or a party to the incident that prompted the delivery of peer counseling services.

- (2) To communications made while the peer counselor was not acting in his or her official capacity as a peer counselor.
- (3) To communications related to a violation of criminal law. This subdivision does not require the disclosure of otherwise privileged communications related to an officer's use of force.

(d) Notwithstanding the provisions of this section, the peer counselor privilege shall not be grounds for failure to report suspected child abuse or neglect to the appropriate county department of social services, or for failure to report a disabled adult suspected to be in need of protective services to the appropriate county department of social services. Notwithstanding the provisions of this section, the peer counselor privilege shall not be grounds for excluding evidence regarding the abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related to a report pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B, or to the Protection of the Abused, Neglected, or Exploited Disabled Adult Act, Article 6 of Chapter 108A of the General Statutes."

Section 2. This act becomes effective December 1, 1999, and applies to all actions and proceedings pending in the courts of this State on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:20 p.m. on the 4th day of August, 1999.

S.B. 1018

SESSION LAW 1999-375

AN ACT CONCERNING MARRIAGE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 51-8 reads as rewritten:

"§ 51-8. *License issued by register of deeds.*

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons if it appears that such persons are authorized to be married in accordance with the laws of this State. In making a determination as to whether or not the parties are authorized to be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates or birth registration cards provided for in G.S. 130-73, or such other evidence as the register of deeds deems necessary to such determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social

security number. If an applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of a sworn or affirmed statement, the register of deeds shall issue the license, provided all other requirements are met, and retain the statement with the register's copy of the license. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:30 p.m. on the 4th day of August, 1999.

H.B. 240

SESSION LAW 1999-376

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is (i) to authorize the construction or acquisition by certain constituent institutions of The University of North Carolina, of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund of the State.

Section 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, are as follows:

1. Appalachian State University

Athletic Facilities	\$6,241,500
Improvements to Student Residence Facilities	9,417,000
Central Campus Parking Deck	9,169,400
Plemmons Student Union	
Interior/Exterior Renovations	4,046,700
Bookstore Renovations	2,250,000

2. East Carolina University

Materials Warehouse	2,900,300
Jones Hall Renovations and College Hill	
Central Chiller Plant	18,544,200

- | | |
|---|------------|
| 3. Elizabeth City State University | |
| Renovation of Residence Halls | 2,050,000 |
| 4. North Carolina A&T State University | |
| Williams Cafeteria Renovation and Expansion | 8,579,100 |
| 5. North Carolina State University | |
| Central Stores Surplus Warehouse Expansion | 4,185,400 |
| Academic and Practice Facility | 22,071,100 |
| East Campus Dining Facility | 3,134,800 |
| 6. The University of North Carolina at Asheville | |
| New Residence Hall | 5,699,700 |
| North Carolina Center for Creative Retirement | 3,471,600 |
| 7. The University of North Carolina at Chapel Hill | |
| Teaching Research Building - School of Public Health | 25,598,300 |
| Addition to Carrington Hall - School of Nursing | 7,904,000 |
| Residence Halls for 1,000 Students | 42,067,500 |
| Medical School Office Building | 33,677,000 |
| Acquisition of Chapel Hill North Office Building | 6,200,000 |
| Airport Drive Office Building | 7,005,200 |
| 8. The University of North Carolina at Charlotte | |
| Bookstore | 4,099,200 |
| Cone Center Renovations | 4,473,400 |
| Parking Deck 'F' | 8,223,400 |
| 9. The University of North Carolina at Greensboro | |
| High-Rise Residence Hall Roof Replacements | 737,500 |
| Residence Hall Data Wiring and Electrical Renovations | 4,525,000 |
| Elliott University Center Renewal and Bookstore/Food Court Addition | 22,000,000 |
| 10. The University of North Carolina at Wilmington | |
| Housing for 200 Students | 8,043,900 |

University Union Addition and
Renovation

7,615,000

11. Western Carolina University

Hinds University Center Addition 4,904,200

New Student Housing (300 Beds) 14,480,600

Housing for Students with Families
(20 units) 1,476,300.

Section 3. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:35 p.m. on the 4th day of August, 1999.

H.B. 279

SESSION LAW 1999-377

AN ACT TO AUTHORIZE TOWNSHIP HOSPITALS STILL OPERATING UNDER PRE-1983 LAW TO LEVY ADDITIONAL TAXES AFTER A REFERENDUM, AND TO MODERNIZE PROVISIONS OF LAW APPLICABLE TO THEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131-4, as it applies to hospitals continuing to operate under Article 2, Chapter 131 of the North Carolina General Statutes pursuant to Section 3, Chapter 775 of the 1983 Session Laws, is amended by adding a new subdivision to read:

"(4) Extension of Tax Levy. Prior to or following the expiration of the tax levy specified in subdivision (3) of this section, a new petition may be presented to the governing body of any county in which a township is located, signed by 200 resident freeholders of such township asking that an annual tax continue to be levied for the maintenance, operation, and improvement of the public hospital, after the expiration of the tax levy specified in subdivision (3). The procedure for submitting the petition and holding an election on the issue of continuing the tax levy shall be the same as the procedure for the petition and election for establishment of the initial tax levy, provided that the requirement that 150 of the 200 petitioners not be residents of the city, town, or village where the hospital is to be located shall not apply. The tax to be levied under such new election shall not

exceed one twenty-fifth of one cent (1/25 of 1 cent) on the dollar (\$1.00) for a period of time not exceeding 30 years and shall be for the issue of county or township bonds to provide funds for the maintenance and improvement of the public hospital."

Section 2. G.S. 131-5 reads as rewritten:

"§ 131-5. *Election on tax levy; collection and application of funds.*

The board of elections of such county, township, or town shall submit to the qualified electors thereof, at a regular or special election, the question whether there shall be levied upon the assessed property of such county, township, or town a tax of one fifteenth of one cent (1/15 of 1¢) on the dollar (\$1.00) for the purchase of real estate for hospital purposes, for the construction of hospital buildings, and for maintaining same, or for either or all of such purposes. The ballots to be used at any election at which the hospital question is submitted shall be printed with a statement substantially as follows:

☐ Yes.

For a cent tax for a bond issue for a public hospital and for maintenance of same.

☐ No.

If a majority of the qualified voters at such election on the proposition shall be in favor of a tax as submitted for a bond issue for a public hospital and for maintenance of same, the governing body shall levy the tax so authorized, which shall be collected in the same manner as other taxes are collected, and credited to the "Hospital Fund," and shall be paid out on the order of the hospital trustees for the purposes authorized by this Article, and for no other purposes whatever.

The procedure for the submission of the issue of the continuation of the tax levy shall be the same as set forth above, provided that the tax shall not exceed one twenty-fifth of one cent (1/25 of 1 cent) on the dollar (\$1.00) and the issue to be submitted to the voters shall be as follows:

'☐ FOR

☐ AGAINST

A ----- cent tax for a bond issue for maintenance and improvement of the public hospital'."

Section 3. All hospitals which continue to operate under Article 2 of Chapter 131 of the General Statutes pursuant to Section 3 of Chapter 775 of the 1983 Session Laws shall, in addition to the powers and authorities set forth in Article 2 of Chapter 131 of the General Statutes have the powers set forth in G.S. 131 E-7(a)(1), (3), (5), (6), 131E-7(b), 131E-7(c), 131E-7.1, 131E-11, 131E-23(1), (2), (5), (6), (7), (8), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (23), (24), (25), (26), (27), (28), (30), (31), (32), (33), (34), 131E-26, and 131E-27.

Section 4. Any hospital continuing to operate under Article 2 of Chapter 131 of the General Statutes pursuant to Section 3 of Chapter 775 of the 1983 Session Laws shall be considered to be a

"public hospital" within the meaning of G.S. 159-39 and to be a "unit of local government" within the meaning of G.S. 160A-20.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:39 p.m. on the 4th day of August, 1999.

H.B. 1084

SESSION LAW 1999-378

AN ACT TO AUTHORIZE COUNTIES TO ISSUE BONDS TO PURCHASE LAND FOR MULTIPLE USE FOR PRESENT OR FUTURE COUNTY, OPEN SPACE, COMMUNITY COLLEGE, AND PUBLIC SCHOOL PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-48(c) reads as rewritten:

"(c) Each county is authorized to borrow money and issue its bonds under this Article in evidence of the debt for the purpose of, in the case of subdivisions (1) through ~~(4a)~~ (4b) of this subsection, paying any capital costs of any one or more of the purposes and, in the case of subdivision (5) of this subsection, to finance the cost of the purpose:

- (1) Providing community college facilities, including without limitation buildings, plants, and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, student unions, dormitories, gymnasiums, athletic fields, cafeterias, utility plants, and garages.
- (2) Providing courthouses, including without limitation offices, meeting rooms, court facilities and rooms, and detention facilities.
- (3) Providing county homes for the indigent and infirm.
- (4) Providing school facilities, including without limitation schoolhouses, buildings, plants and other facilities, physical and vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles.
- (4a) Providing improvements to subdivision and residential streets pursuant to G.S. 153A-205.
- (4b) Providing land for present or future county corporate, open space, community college, and public school purposes.
- (5) Providing for the octennial revaluation of real property for taxation."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:42 p.m. on the 4th day of August, 1999.

H.B. 1098

SESSION LAW 1999-379

AN ACT TO STRENGTHEN THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 AND TO REQUIRE THAT THE EXAMINATION FOR A GENERAL CONTRACTOR'S LICENSE INCLUDE QUESTIONS THAT TEST AN APPLICANT'S KNOWLEDGE OF THE REQUIREMENTS OF THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-54.1 reads as rewritten:

"§ 113A-54.1. Approval of erosion control plans.

(a) A draft erosion control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. The Commission shall approve, approve with modifications, or disapprove a draft erosion control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion control plan or a revised erosion control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan. The Commission may establish an expiration date for erosion control plans approved under this Article.

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require any revision of the plan that is necessary to comply with this Article. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.

(c) ~~The Director of the Division of Land Resources~~ Commission shall disapprove an erosion control plan if ~~the plan, when implemented,~~ implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to

protect riparian buffers along surface waters. The Director of the Division of Land Resources may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(d) In the event that an erosion control plan is disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in writing the specific reasons that the plan was disapproved. The applicant may appeal the Director's disapproval of the plan to the Commission. For purposes of this subsection and subsection (c) of this section, an applicant's record may be considered for only the two years prior to the application date."

Section 2. G.S. 113A-57(4) reads as rewritten:

- "(4) No person shall initiate any land-disturbing activity on a tract if more than one acre is to be uncovered unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with the agency having jurisdiction. The agency having jurisdiction shall forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract."

Section 3. G.S. 113A-61(b1) reads as rewritten:

"(b1) A local government shall condition approval of a draft erosion control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. A local government shall disapprove an erosion control plan if ~~the plan, when implemented,~~ implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local

government pursuant to this Article and has not complied with the notice within the time specified in the notice;

- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

Section 4. G.S. 113A-64(a) reads as rewritten:

"(a) Civil Penalties. --

- (1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. ~~The maximum civil penalty for a violation, other than a violation of a stop work order issued under G.S. 113A-65.1, is five hundred dollars (\$500.00). The maximum civil penalty for a violation of a stop work order violation is five thousand dollars (\$5,000). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in G.S. 113A-61.1(b). A civil penalty may be assessed from the date the notice of violation is served, of the violation.~~ Each day of a continuing violation shall constitute a separate violation.
- (2) The Secretary or a local government that administers an erosion and sediment control program approved under G.S. 113A-60 shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Secretary within 30 days after it is due, the Department shall request the Attorney General to institute a civil action to recover the amount of the assessment. If a violator does not pay a civil penalty assessed by a local government within 30 days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil

action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

- (3) In determining the amount of the penalty, the Secretary shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this Article.
- (4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.
- (5) The clear proceeds of civil penalties collected by the Department or other State agency under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue."

Section 5. G.S. 113A-54.2(a) reads as rewritten:

"(a) The Commission may establish a fee schedule for the review and approval of erosion control plans under this Article. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities. ~~The total amount of fees collected under this section in any fiscal year may not exceed one-third of the total administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities in the prior fiscal year.~~ An application fee may not exceed fifty dollars (\$50.00) per acre of disturbed land shown on an erosion control plan or of land actually disturbed during the life of the project."

Section 6. G.S. 113A-61.1(c) reads as rewritten:

"(c) If the Secretary, a local government that administers an erosion and sediment control program approved under G.S. 113A-60, or other approving authority determines that the person engaged in the land-disturbing activity has failed to comply with this Article, the Secretary, local government, or other approving authority shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which the person must comply with this Article and inform the person of the actions that need to be taken to comply with this Article. Any person who fails to comply within the time specified is subject to the additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64."

Section 7. G.S. 87-10(b), as amended by Section 1 of S.L. 1999-123, reads as rewritten:

"(b) The Board shall conduct an examination, either oral or written, of all applicants for license to ~~ascertain~~ ascertain, for the classification of license for which the applicant has applied: (i) the ability of the applicant to make a practical application of ~~his~~ the applicant's knowledge of the profession of ~~contracting~~, contracting; ~~under the classification contained in the application, and to ascertain~~ (ii) the qualifications of the applicant in reading plans and specifications, knowledge of estimating costs, construction, ~~ethics~~ ethics, and other similar matters pertaining to the contracting ~~business~~ business; (iii) the knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the State of North Carolina relating to contractors, ~~construction and liens~~, construction, and liens; and (iv) the applicant's knowledge of requirements of the Sedimentation Pollution Control Act of 1973, Article 4 of Chapter 113A of the General Statutes, and the rules adopted pursuant to that Article. If the results of the examination of the applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general contractor in the State of North Carolina, as provided in said certificate, which may be limited into five classifications as ~~the common use of the terms are known -- that is,~~ follows:

- (1) Building contractor, which shall include private, public, commercial, industrial and residential buildings of all ~~types; types.~~
- (1a) Residential contractor, which shall include any general contractor constructing only residences which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. ~~143-138; 143-138.~~
- (2) Highway ~~contractor; contractor.~~
- (3) Public utilities contractors, which shall include those whose operations are the performance of construction work on the following subclassifications of facilities:
 - a. Water and sewer ~~mains and mains~~, water service ~~lines~~ lines, and house and building sewer lines as defined in the North Carolina State Building Code, and water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift ~~stations~~ stations, and pumping ~~stations; stations.~~
 - b. Water and wastewater treatment facilities and appurtenances ~~thereto; thereto.~~
 - c. Electrical power transmission facilities, and primary and secondary distribution facilities ahead of the point of delivery of electric service to the ~~customer;~~ customer.
 - d. Public communication distribution ~~facilities; and~~ facilities.
 - e. Natural gas and other petroleum products distribution facilities; provided the General Contractors Licensing Board may issue license to a public utilities contractor

limited to any of the above subclassifications for which the general contractor ~~qualifies, and qualifies.~~

- (4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the State of North Carolina.

(b1) Public utilities contractors constructing water service lines and house and building sewer lines as provided in (3)a above sub-subdivision a. of subdivision (3) of subsection (b) of this section shall terminate said lines at a valve, box, meter, or manhole or cleanout at which the facilities from the building may be connected. Public utilities contractors constructing fire service mains for connection to fire sprinkler systems shall terminate those lines at a flange, cap, plug, or valve inside the building one foot above the finished floor. All fire service mains shall comply with the NFPA standards for fire service mains as incorporated into and made applicable by Volume V of the North Carolina Building Code."

Section 8. This act becomes effective 1 October 1999 and applies to land-disturbing activity that occurs on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:45 p.m. on the 4th day of August, 1999.

H.B. 1471

SESSION LAW 1999-380

AN ACT TO ADJUST THE MATURITY DATE OF THE 1996 HIGHWAY BONDS TO REFLECT A CHANGE IN THE ESTIMATED COMPLETION DATE OF HIGHWAY TRUST FUND PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that:

- (1) The State Highway Bond Act of 1996 provided, subject to a vote of the qualified voters of the State, for the issuance of nine hundred fifty million dollars (\$950,000,000) general obligation bonds of the State for certain highway purposes.
- (2) These bonds were approved by the voters.
- (3) The State Highway Bond Act of 1996 stated that the bonds could be used to expedite the completion of certain highway projects that would otherwise be funded from the Highway Trust Fund only when sufficient revenues were generated.
- (4) The State Highway Bond Act of 1996 also stated the intent of the General Assembly that the debt service on the bonds be paid for with the revenues that would otherwise be

deposited to the Highway Trust Fund to fund highway construction.

- (5) The State Highway Bond Act of 1996 recognized that these revenues would be available only until the Highway Trust Fund sunset upon completion of the highway construction it funds, estimated to occur at the end of 2013, and thus required that the bonds must mature not later than that date.
- (6) Since 1996, it has been determined that the Highway Trust Fund construction projects will not be completed by 2013 but instead could take until at least 2020.
- (7) Accordingly, the 2013 deadline set for the maturity of the highway bonds is no longer appropriate, and should be extended to the current estimated date for completion of Highway Trust Fund projects, which is 2020.

Section 2. Section 2(b) of Chapter 590 of the 1995 Session Laws (1996) reads as rewritten:

"(b) Findings and determinations. -- The General Assembly finds that:

- (1) Pursuant to Chapter 692 of the 1989 Session Laws, the General Assembly created the Highway Trust Fund, provided for revenues to be deposited to the Highway Trust Fund, and designated how the revenues may be expended.
- (2) As contemplated by Chapter 692, highway construction to be funded from the Highway Trust Fund is funded on a "pay-as-you-go" basis, with highway construction proceeding based upon the amount of funds to be available to pay the costs of the construction on a current basis, and this highway construction is expected to be completed and funded by December 31, ~~2013~~, 2020.
- (3) Providing funds from the proceeds of bonds as authorized in this act will expedite the completion of construction of urban loops, Intrastate System highways, and necessary improvements to the State secondary road highway system that otherwise would be constructed only when sufficient revenues were generated to fund this construction.
- (4) The State could issue the bonds authorized by this act, expediting this construction, and could provide sufficient funds to pay debt service on the bonds from the moneys otherwise to be deposited to the Highway Trust Fund to fund highway construction.
- (5) Sufficient moneys are expected to be deposited to the Highway Trust Fund to pay anticipated debt service on the bonds authorized by this act.
- (6) Although the bonds authorized by this act will constitute general obligation bonds, secured by the faith and credit and taxing power of the State, and although the funds deposited to the Highway Trust Fund are not specifically pledged to pay debt service on the bonds, it is the intent of the General Assembly that the debt service on the bonds authorized by

this act will be provided from amounts deposited to the Highway Trust Fund, and certain amendments to Chapter 692 of the 1989 Session Laws are necessary to facilitate this funding of payments."

Section 3. Section 10(a) of Chapter 590 of the 1995 Session Laws (1996) reads as rewritten:

"(a) Terms and conditions. Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not later than December 1, ~~2013~~, 2020, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:49 p.m. on the 4th day of August, 1999.

H.B. 1233

SESSION LAW 1999-381

AN ACT TO AMEND THE STRUCTURAL PEST CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-65.23 reads as rewritten:

"§ 106-65.23. *Structural Pest Control Division of Department of Agriculture and Consumer Services recreated; Director; powers and duties of Commissioner; Structural Pest Control Committee created; appointment; terms; powers and duties; quorum.*

(a) There is recreated, within the North Carolina Department of Agriculture and Consumer Services, a Division to be known as the Structural Pest Control Division. The Commissioner of Agriculture may appoint a Director of the ~~Division~~ Division, chosen from a list of nominees submitted to him by the Structural Pest Control Committee created in this section, whose duties and authority shall be determined by the ~~Commissioner~~ Commissioner in consultation with the Committee. The Director shall be responsible for and answerable to the Commissioner of Agriculture and the Structural Pest Control Committee as to the operation and conduct of the Structural Pest Control Division. The Director shall act as secretary to the Structural Pest Control ~~Committee created in this section~~ Committee.

(b) The Commissioner shall have the following powers and duties under this Article:

- (1) To administer and enforce the provisions of this Article and the rules adopted thereunder by the Structural Pest Control Committee. In order to carry out these powers and duties, the Commissioner may delegate to the Director of the Structural Pest Control Division the powers and duties assigned to him under this Article.
- (2) To assign the administrative and enforcement duties assigned to him in this Article.
- (3) To direct, in consultation with the Structural Pest Control Committee, the work of the personnel employed by the Structural Pest Control Committee and the work of the personnel of the Department assigned to perform the administrative and enforcement functions of this Article.
- (4) To develop, for the Structural Pest Control Committee's consideration for adoption, proposed rules, policies, new programs, and revisions of existing programs under this Article.
- (5) To monitor existing enforcement programs and to provide evaluations of these programs to the Structural Pest Control Committee.
- (6) To attend all meetings of the Structural Pest Control Committee, but without the power to vote unless the Commissioner attends as the designee on the Committee from the Department of Agriculture and Consumer Services.
- (7) To keep an accurate and complete record of all meetings of the Structural Pest Control Committee and to have legal custody of all books, papers, documents, and other records of the Committee.
- (8) To perform such other duties as may be assigned to him by the Structural Pest Control Committee.

(c) There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture and Consumer Services to serve on the Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of the University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of the University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of the dean's choice from the entomology faculty of the University to serve on the Committee at the pleasure of the dean. The Secretary of Health and Human Services shall appoint one member of the

Committee who shall be an epidemiologist and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of the Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company.

One member of the Committee shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member of the Committee shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Vacancies in such appointments shall be filled in accordance with G.S. 120-122.

The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest control industry, the pesticide industry, the Department of Agriculture and Consumer Services, the Department of Health and Human Services and the School of Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Appointments made by the General Assembly shall be for terms of two years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant.

(d) The Structural Pest Control Committee shall have the following powers and duties:

(1) To adopt rules and make policies as provided in this Article.

(2) To issue, deny, suspend, revoke, modify, or restrict licenses, certified applicator cards, and registered technician cards under the provisions of this Article. In all matters affecting licensure, the decision of the Committee shall constitute the final agency decision.

~~make final decisions under this Article concerning licenses, certified applicator cards, and identification cards. The Committee shall~~

(3) To report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.

~~The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.~~

(e) Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the

provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

Five members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, all members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee."

Section 2. G.S. 106-65.24 reads as rewritten:

"§ 106-65.24. *Definitions.*

~~For the purposes of this Article, the following terms, when used in the Article or the rules and regulations, or orders made pursuant thereto, shall be construed respectively to mean:~~ As used in this Article:

- (1) 'Animal' means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.
- (1a) 'Applicant for a certified applicator's identification card' means any person making application to use restricted use pesticides in any phase of structural pest control.
- (2) 'Applicant for a license' means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in structural pest control, control of structural pests or household pests, or fumigation operations, or any person qualified under the terms of this Article.
- (3) 'Attractants' means substances, under whatever name known, which may be toxic to insects and other pests but are used primarily to induce insects and other pests to eat poisoned baits or to enter traps.
- (3a) Repealed by Session Laws 1989, c. 725.
- (3b) 'Branch Office' means any office under the management of a licensee that is not a home office. 'Call office' means any office or telephone answering service other than a licensee's home office which is used by a licensee to conduct structural pest control work and which employs no more than one individual engaged in structural pest control work.
- (4) 'Certified applicator' means any individual who is certified under G.S. 106-65.25 as authorized to use or supervise

the use of any pesticide which is classified for restricted use.

- (5) 'Commissioner' means the Commissioner of Agriculture of the State of North Carolina.
- (6) 'Committee' means the Structural Pest Control Committee.
- (6a) 'Deviation' means failure of the licensee or certified applicator or registered technician card holder to follow any rule adopted by the Committee under provisions of this Article.
- (7) 'Device' means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.
- (8) Repealed by Session Laws 1975, c. 570, s. 4.
- (8a) 'Director' means the Director of the Structural Pest Control Division of the Department of Agriculture and Consumer Services.
- (9) 'Employee' means any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood-destroying organisms.
- (9a) 'Enforcement agency' means the Structural Pest Control Division of the Department of Agriculture and Consumer Services.
- (10) 'Fumigants' means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.
- (11) 'Fungi' means wood-decaying fungi.
- (11a) 'Home office' means the ~~licensee's principal place of business.~~ office identified to the enforcement agency by a licensee as his or her principal place of business.
- (12) 'Insect' means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insects, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and

usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and sowbugs.

- (13) 'Insecticides' means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.
- (14) 'Label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- (14a) The term 'labeling' means all labels and other written, printed, or graphic matter:
 - a. Upon the pesticide (or device) or any of its containers or wrappers;
 - b. Accompanying the pesticide (or device) at any time;
 - c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by the law to conduct research in the field of pesticides.
- (15) ~~'Licensee' means the designated person in charge of the business establishment or business entity, whether it be individual, firm, partnership, corporation, association or any organization, or any combination thereof, engaged in pest control work covered under the provisions of this Article. Each branch office of a business establishment is to be in charge of a person who has a license herein provided for, any person qualified for and holding a license for any phase of structural pest control pursuant to this Article.~~
- (16) 'Person' means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.
- (17) 'Pest' means any living organism, including but not limited to, insects, rodents, birds, and fungi, which the Commissioner declares to be a pest.
- (18) 'Pesticide' means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.
- (19) 'Registered pesticide' means a pesticide which has been registered by federal and/or State agency responsible for registering pesticides.
- (19a) 'Registered technician' means any individual who is required to be registered with the Structural Pest Control Division under G.S. 106-65.31.

- (20) 'Repellents' means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed because of capacity for preventing the entrance or attack of pests.
- (21) 'Restricted use pesticide' means a pesticide which has been designated as such by the federal and/or State agency responsible for registering pesticides.
- (22) 'Rodenticides' means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.
- (23) 'Structural pest control' means the control of wood-destroying organisms or household pests (including, but not limited to, animals such as moths, cockroaches, ants, beetles, flies, mosquitoes, ticks, wasps, bees, fleas, mites, silverfish, millipedes, centipedes, sowbugs, crickets, termites, wood borers, etc.), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, attractants, rodenticides, fungicides, and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings, and other structures (including household structures, commercial buildings and other structures in all stages of construction), and outside areas, as well as all phases of fumigation, including treatment of products by vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof.
- (24) 'Under the direct supervision of a certified applicator' means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied."

Section 3. G.S. 106-65.25 reads as rewritten:

"§ 106-65.25. *Phases of structural pest control; prohibited acts; license required; exceptions.*

(a) The Committee shall classify license phases to be issued under this Article. Separate phases or subphases shall be specified for:

- (1) Control of household pests by any method other than fumigation ('P' phase);
- (2) Control of wood-destroying organisms by any method other than fumigation ('W' phase); and
- (3) Fumigation ('F' phase).

(b) It shall be unlawful for any person ~~to act in the capacity of a structural pest control licensee, to:~~

- (1) ~~advertise~~ Advertise as, offer to engage in, or engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control or otherwise act in the capacity of a structural pest control licensee unless he the person is licensed as provided for in pursuant to this Article. Article or has engaged the services of a licensee as a full-time regular employee who is responsible for the structural pest control performed by the company. A license is required for each phase of structural pest control. No person may hold
- (2) ~~Hold more than one license for each phase, phase of structural pest control. The licensee shall be responsible for the supervision of the work performed under his license.~~
- (3) Use a restricted use pesticide in any phase of structural pest control, whether it be on the person's own property or on the property of another, unless the person:
 - a. Qualifies as a certified applicator for that phase of structural pest control; or
 - b. Is under the direct supervision of a certified applicator who possesses a valid certified applicator's identification card for that phase of structural pest control.
- (4) Use or supervise the use of restricted use pesticides in demonstrating or supervising a demonstration to the public of the proper use and techniques of the application of pesticides or conducting field research with pesticides unless:
 - a. The person possesses a valid certified applicator's identification card;
 - b. The person is conducting laboratory research involving restricted use pesticides; or
 - c. The person is a doctor of medicine or a doctor of veterinary medicine applying restricted use pesticides as drugs or medication during the course of his or her normal professional practice.

This subdivision applies to all persons, including cooperative extension specialists demonstrating pesticide products, individuals demonstrating methods used in public programs, and local, State, federal, commercial, and other persons conducting field research on or using restricted use pesticides.

(c) ~~A licensee may not establish any office other than his home office from which more than one employee is performing structural pest control work unless a separate licensee is placed in charge of that office. It shall be unlawful for any licensee to do any of the following:~~

- (1) Establish, be in charge of, or manage any branch office in excess of the number of branch offices that may be established, supervised, or managed by a licensee as set forth in rules adopted by the Committee.
- (2) Fail to supervise the structural pest control performed out of the licensee's home office or any branch office under the licensee's management.
- (3) Allow his or her license to be used by any person or company for which he or she is not a full-time regular employee actively and personally engaged in the supervision of the structural pest control performed under the license.
- (4) Use any pesticide, material, or device prohibited by the Committee or use any approved pesticide, material, or device in a manner prohibited by the Committee.
- (5) Use or supervise the use of restricted use pesticides in a phase of structural pest control for which the person is not licensed or qualified as a certified applicator unless the person's use is under the supervision of a licensee or certified applicator certified in that phase of structural pest control.

(c1) The Committee shall adopt rules that permit a licensee to establish branch offices in addition to a home office. In no event shall the rules adopted restrict the number of branch offices a licensee can establish, supervise, or manage to fewer than two branch offices. The rules shall include provisions to ensure that the licensee can adequately supervise all structural pest control performed from the offices and under his or her license.

(d) A license is not required for any person (or his the person's full-time regular employees) doing structural pest control work on his the person's own property; provided, however, that no property. No fee may be charged for structural pest control work performed by any such person.

(e) Any person who uses a restricted use pesticide in any phase of structural pest control, whether it be on his own property or on the property of another, must:

- (1) Qualify as a certified applicator for that phase of structural pest control; or
- (2) Be under the direct supervision of a certified applicator possessing a valid identification card for that phase of structural pest control.

(f) Persons who demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration or conduct field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides must possess a valid certified applicator's identification card. Included in the first group are such persons as extension representatives demonstrating pesticide products and those individuals demonstrating methods used on public programs. The second group includes local, State, federal,

~~commercial, and other persons conducting field research on or utilizing restricted use pesticides.~~

~~This subsection does not apply to the following persons:~~

- ~~(1) Persons conducting laboratory-type research involving restricted use pesticides; or~~
- ~~(2) Doctors of medicine and doctors of veterinary medicine applying restricted use pesticides as drugs or medication during the course of their normal practice.~~

(g) Any person issued a license for any one or any combination of the phases of structural pest control shall be deemed to be a 'certified applicator' to use or supervise the use of restricted use pesticides so long as the pesticides are being used only in the ~~phase(s)~~ phase of structural pest control for which the person is licensed.

(h) Licenses and certified applicator's identification cards may only be issued to individuals. License certificates and certified applicator's identification cards shall be issued in the name of the individual, shall bear the name and address of ~~his~~ the individual's business or employer's business and shall indicate the phase or phases for which the individual is qualified and such other information as the Committee may specify."

Section 4. G.S. 106-65.26(d) reads as rewritten:

"(d) All applicants for license must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood-destroying ~~organisms~~ organisms, or fumigation. ~~No person who has within five years of his application been convicted of or has entered a plea of guilty or a plea of nolo contendere to a crime involving moral turpitude, or who has forfeited bond to a charge involving moral turpitude, shall be entitled to take an examination or the issuance of a license under the provisions of this Article. No applicant is entitled to take an examination for the issuance of a license pursuant to this Article who has within five years of the date of application been convicted, entered a plea of guilty or of nolo contendere, or forfeited bond in any State or federal court for a violation of G.S. 106-65.25(b), any felony, or any crime involving moral turpitude.~~"

Section 5. G.S. 106-65.27(c1) reads as rewritten:

"(c1) When there is a transfer of ownership, management, operation of a structural pest control business or in the event of the death or disability of a licensee there shall be not more than a total of 90 days during any 12-month period in which said business shall operate without a licensee assigned to ~~it~~; provided that, in the event of the death or disability of a licensee, the Committee shall have the authority to grant up to an additional 90 days within the 12-month period in which a business may operate without a licensee assigned to it.

The owner, partnership, corporation, or other entity operating said business shall, within 10 days of such transfer or disability or within 30 days of death, designate in writing to the Division a certified applicator who shall be responsible for and in charge of the structural

pest control operations of said business during the 90-day period. If the owner, partnership, corporation, or other entity operating the business fails to designate a certified applicator who shall be responsible for the operation of the business during the 90-day period, the business shall cease all structural pest control activities upon expiration of the applicable notification period and shall not resume operations until a certified applicator is so designated.

During the 90-day period the use of any restricted use pesticide shall be by or under the direct supervision of the certified applicator designated in writing to the Division. The designated certified applicator shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision.

The new licensee shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision."

Section 6. G.S. 106-65.28 is amended by adding a new subsection to read:

"(g) Any pesticide, material, or device for which such information is requested by the Committee pursuant to G.S. 106-65.29(9a) and denied by the registrant or manufacturer shall not be used in any structural pest control performed for compensation and may only be used by an individual performing structural pest control on the individual's own property."

Section 7. G.S. 106-65.29 reads as rewritten:
 "§ 106-65.29. *Rules and regulations.*

In order to ensure that persons licensed and certified under this Article are capable of performing a high quality of workmanship, the Committee ~~is hereby authorized and empowered to make~~ may adopt rules and regulations with respect to:

- (1) The amount and kind of training required of an applicant for a license and certified applicator's card to engage in any one or more of the three phases of structural pest control, and the amount and kind of training required of an applicant for a registered technician's identification card.
- (2) The type, frequency and passing score of any examination given an applicant for a license and certified applicator's card under this Article.
- (3) The amount, kind and frequency of continuing education required of a licensee and certified applicator.
- (4) The methods and materials to be used in performing any work authorized by the issuance of a license and certified applicator's card under this Article.
- (5) The business records to be made and maintained by licensees and certified applicators under this Article necessary for the Committee to determine whether the licensee and certified applicator is performing a high quality of workmanship.
- (6) The credentials and identification required of licensees and certified applicators, their employees and equipment,

including service vehicles, when engaged in any work defined under this Article.

- (7) Safety methods and procedures for structural pest control work.
- (8) Fees for reinspection following a finding of a deviation, as defined by the Committee.
- (9) Fees for training materials provided by the Committee or the Division. Such fees may be placed in a revolving fund to be used for training and continuing education purposes and shall not revert to the General Fund.
- (9a) Efficacy data and other technical information to be submitted by registrants and manufacturers of pesticides and other materials or devices for review and approval, in order for the Committee and the enforcement agency to ensure the efficacy of pesticides and other materials or devices used in structural pest control in this State. This subdivision does not require either the Committee or the enforcement agency to disclose any information that is confidential information within the meaning of G.S. 132-1.2.
- (10) The policies and programs set forth in this Article."

Section 8. G.S. 106-65.30 reads as rewritten:

"§ 106-65.30. *Inspectors; inspections and reports of violations; designation of resident agent.*

(a) For the enforcement of the provisions of this Article the Commissioner is authorized to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this Article. The inspectors shall be known as "structural pest control inspectors." The Commissioner ~~shall~~ may enforce compliance with the provisions of this Article by making or causing to be made periodical and unannounced inspections of work done by licensees and certified applicators under this Article who engage in or supervise any one or more phases of structural pest control as defined in G.S. 106-65.25. The Commissioner shall cause the prompt and diligent investigation of all reports of violations of the provisions of this Article and all rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by a representative of the Commissioner of any property without first securing the permission of the owner or occupant thereof.

(b) Prior to the issuance or renewal of a license or certified applicator's identification card, every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Commissioner or his authorized agent a resident agent upon whom service of notice or process may be made to enforce the provisions of this Article and rules and regulations adopted pursuant to the provisions hereof or any civil or criminal liabilities arising hereunder.

(c) The Commissioner shall have authority to appoint personnel of the Structural Pest Control Division as special inspectors and said

special inspectors are hereby vested with the authority to arrest with a warrant, or to arrest without a warrant when a violation of this Article is being committed in their presence or they have reasonable grounds to believe that a violation of this Article is being committed in their presence. Said special inspectors shall take offenders before the several courts of this State for prosecution or other proceedings. The provisions of this section do not apply to any person holding a valid structural pest control license, or a certified applicator's identification card, or a registered technician's identification card as issued under the provisions of this Article. Special inspectors shall not be entitled to the benefits of the Law Enforcement Officers' Benefit and Retirement Fund or the benefits of the Law Enforcement Officers' and Others Death Benefit Act as provided for in Articles 12 and 12A of Chapter 143 of the General Statutes, respectively."

Section 9. G.S. 106-65.31(b) reads as rewritten:

"(b) License. -- The fee for the issuance or renewal of a license for any one phase of structural pest control shall be ~~one hundred twenty-five dollars (\$125.00)~~, one hundred fifty dollars (\$150.00). Each additional phase shall be ~~fifty dollars (\$50.00)~~, sixty-five dollars (\$65.00). The fee for each subphase shall be ~~ten dollars (\$10.00)~~, fifteen dollars (\$15.00). Licenses shall expire on June 30 of each year and shall be renewed annually. All licensees who fail or neglect to renew their license on or before June 30, but who make application before January 1 of the following year, may have their license renewed without having to be reexamined, unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(d)(3). No structural pest control work may be performed until the license has been renewed or until a new license has been issued.

Any licensee whose employment is terminated by his employer or any licensee who is transferred to another company or location other than the company or location shown on his license certificate, may at any time, have his license reissued for the remainder of the license year for a fee of ten dollars (\$10.00).

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of ten dollars (\$10.00)."

Section 10. G.S. 106-65.33 reads as rewritten:

"§ 106-65.33. *Violation of Article, falsification of records, or misuse of registered pesticide a misdemeanor.*

(a) Any person who shall be adjudged to have violated any provision of this Article or who falsifies any records required to be kept by this Article or by the rules and regulations pursuant to this Article or who uses a registered pesticide in a manner inconsistent with its labeling shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Committee, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) Nothing in this Article shall be construed to require the Committee or the Commissioner to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for a minor violation of this Article whenever the Committee or Commissioner determines that the public interest will be adequately served in the circumstances by a suitable written notice or warning."

Section 11. G.S. 106-65.41 reads as rewritten:

"§ 106-65.41. Civil penalties.

A civil penalty of not more than two thousand dollars (\$2,000) may be assessed by the Committee against any person for any one or more of the causes set forth in G.S. 106-65.28(a)(1) through ~~(12)~~, (12) and G.S. 106-65.28(a)(14) and (15), or who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article. In determining the amount of any penalty, the Committee shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given an opportunity for a hearing pursuant to Chapter 150B of the General Statutes. Assessments may be collected, following judicial review, if any, of the Committee's final decision imposing the assessment, in any lawful manner for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Section 12. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:54 p.m. on the 4th day of August, 1999.

H.B. 1470

SESSION LAW 1999-382

AN ACT ALLOWING THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS TO ENTER INTO AGREEMENTS WITH SPECIAL IMPAIRED DENTIST PEER REVIEW ORGANIZATIONS TO INCLUDE PROGRAMS FOR IMPAIRED DENTAL HYGIENISTS, TO COLLECT FEES TO FUND SUCH PROGRAMS, AND TO PROVIDE FOR REPRESENTATION FOR DENTAL HYGIENISTS ON THE STATEWIDE SUPERVISORY COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 90 is amended by adding a new section to read:

"§ 90-48.3. Board authority to include impaired dental hygienists in programs developed for impaired dentists.

The Board may enter into agreements with special impaired dentist peer review organizations to include programs for impaired dental hygienists, and the provisions of G.S. 90-48.2 shall apply to any such

agreements and programs. Special impaired dentist peer review organizations shall have the authority to appoint to the organizations, upon the recommendation of the dental hygienist member of the Board, one additional member who is a licensed dental hygienist and the member shall participate in activities and programs as they relate to impaired dental hygienists. Peer liaisons and volunteers participating in programs for impaired dental hygienists shall be dental hygienists. Dental hygienists who work with special impaired dentist peer review organizations in conducting programs for impaired dental hygienists shall have the same protections and responsibilities as members of traditional State and local dental society peer review committees under Article 2A of this Chapter and as provided in G.S. 90-48.2. The provisions of G.S. 90-48.2 regarding confidentiality shall also be applicable to all dental hygienist activities authorized under this section."

Section 2. G.S. 90-223 is amended by adding a new subsection to read:

"(e) The Board shall have the authority to provide for programs for impaired dental hygienists as authorized in G.S. 90-48.3."

Section 3. G.S. 90-232 reads as rewritten:

"§ 90-232. Fees.

In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental Examiners, it is authorized to charge and collect fees established by its rules and regulations not exceeding the following:

(1) Each applicant for examination

\$125.00

(2) Each renewal certificate, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dental hygienist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dental hygienist

60.00

(3) Each restoration of license

60.00

(4) Each provisional license

60.00

(5) Each certificate of license to a resident dental hygienist desiring to change to another state or territory

25.00

(6) Annual fee to be paid upon license renewal to assist in funding programs for impaired dental hygienists

40.00.

In no event may the annual fee imposed on dental hygienists to fund the impaired dental hygienists program exceed the annual fee imposed on dentists to fund the impaired dentist program. All fees shall be payable in advance to the Board and shall be disposed of by the Board in the discharge of its duties under this Article."

Section 4. G.S. 90-48.2(a) reads as rewritten:

"(a) The State Board of Dental Examiners may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with special impaired dentist peer review organizations formed by the North Carolina Dental Society. The organizations shall be made up of Dental Society members designated by the Society, the Board, and the Dental School of the University of North Carolina. Peer review activities to be covered by such agreements shall include investigation, review and evaluation of records, reports, complaints, litigation, and other information about the practices and practice patterns of dentists licensed by the Board, as such matters may relate to impaired dentists. Special impaired dentist peer review organizations may include a statewide supervisory committee and various regional and local components or subgroups. The statewide supervisory committee shall consist of representatives from the North Carolina Dental Society, the UNC School of Dentistry, and the Board. When the statewide supervisory committee considers activities and programs that relate to impaired dental hygienists pursuant to G.S. 90-48.3, its membership shall be expanded to include two dental hygienists appointed upon the recommendation of the dental hygienist member of the Board."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:58 p.m. on the 4th day of August, 1999.

H.B. 1186

SESSION LAW 1999-383

AN ACT TO REVISE THE LAW GOVERNING THE UNEARNED PREMIUM RESERVE OF DOMESTIC TITLE COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-26-25 reads as rewritten:

"§ 58-26-25. *Amount of unearned premium reserve.*

(a) The unearned premium reserve of every domestic title insurance company shall consist of the aggregate of:

- (1) The amount of the unearned premium reserve held as of January 1, 1974, December 31, 1998.
- (2) The amount of all additions required to be made to such reserve by this section, less the reduction of such aggregate amount required hereby.

(b) ~~On each contract of title insurance issued by a~~ A domestic title insurance company on and after ~~January 1, 1974, there shall be reserved~~ January 1, 1999, shall reserve initially as an unearned premium reserve a sum equal to ten per centum (10%) of the ~~original risk premium charged therefor, following items set forth in the title insurer's most recent annual statement on file with the Commissioner:~~

- (1) Direct premiums written; and
- (2) Premiums for reinsurance assumed less premiums for reinsurance ceded during the year.

(c) The aggregate of the amounts set aside in unearned premium reserves in any calendar year, pursuant to subsection (b) of this section, shall be reduced annually at the end of each calendar year following the year in which the policy is issued, at the annual rate of one twentieth of the aggregate of such amounts, over a period of 20 years, pursuant to the following: twenty percent (20%) the first year; ten percent (10%) for years two and three; five percent (5%) for years four through 10; three percent (3%) for years 11 through 15; and two percent (2%) for years 16 through 20.

(d) The entire amount of the unearned premium reserve held as of January 1, 1974, December 31, 1998, shall be accorded a fresh start added to the reserve as of that date and shall be released from said reserve and restored to net profits at the annual rate of one twentieth of the said entire amount, beginning in the next ensuing calendar year, in accordance with the percentages set forth in subsection (c) of this section.

(e) If substantially the entire outstanding liability under all policies, contracts of title insurance or reinsurance agreements of any such title insurance company shall be reinsured, the value of the consideration received by a reinsuring title insurance company authorized to transact the business of title insurance in this State, shall constitute, in its entirety, unearned portions of original premiums and be added to its unearned premium reserve and deemed, for recovery purposes, to have been provided for liabilities assumed during the year of such reinsurance. The amount of such addition to the unearned premium reserve of such assuming title insurance company shall be not less, however, than two thirds of the amount of the unearned premium reserve required to be maintained by the ceding title insurance company at the time of such reinsurance. A supplemental reserve shall be established in accordance with the instructions of the annual statement required by G.S. 58-2-165 and G.S. 58-26-10 consisting of the reserves necessary, when taken in combination with the reserves required by subsections (a) through (d) of this section to cover the company's liabilities with respect to all losses, claims, and loss adjustment expenses.

(f) Each title insurer subject to the provisions of this Article shall file with its annual statement required by G.S. 58-2-165 and G.S. 58-26-10 a certification of a member in good standing of the American Academy of Actuaries. The actuarial certification required of a title insurer must conform to the annual statement instructions for title insurers of the National Association of Insurance Commissioners."

Section 2. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:59 p.m. on the 4th day of August, 1999.

AN ACT TO CLARIFY THE LAW CONCERNING INTEREST ON MONEY JUDGMENTS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO ALLOW INTEREST ON JUDGMENTS ON PENAL BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-5 reads as rewritten:

"§ 24-5. ~~Contracts, except penal bonds, and judgments to bear interest.~~ Interest on judgments.

(a) Actions on Contracts. -- In an action for breach of contract, except an action on a penal bond, the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after ~~judgment~~ judgment, then interest on an award in a contract action shall be at the contract rate after ~~judgment~~ judgment; otherwise it shall be at the legal ~~rate; provided, however, that on~~ rate. On awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, however, interest shall be at the lower of the legal ~~rate, provided however, such rate shall not exceed~~ rate or the contract rate.

(a1) Actions on Penal Bonds. -- In an action on a penal bond, the amount of the judgment, except the costs, bears interest at the legal rate from the date of entry of judgment until the judgment is satisfied.

(b) Other Actions. -- In an action other than contract, ~~the~~ any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is ~~instituted~~ commenced until the judgment is satisfied. Any other portion of a money judgment in an action other than contract, except the costs, bears interest from the date of entry of judgment until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate."

Section 2. Section 2 of Chapter 214 of the 1985 Session Laws reads as rewritten:

"Sec. 2. This act shall become effective October 1, 1985. This act shall not affect pending litigation and shall not affect the law as it existed before the enactment of Chapter 327 of the 1991 Session Laws. litigation."

Section 3. This act becomes effective October 1, 1999, and applies to actions or proceedings filed on or after that date, except that G.S. 24-5(a1), as enacted by Section 1 of this act, applies to actions on penal bonds in which the penal bond is filed or posted on or after October 1, 1999. The amendments to G.S. 24-5(a) in Section 1 of this act shall not apply to actions based on a contract entered into on or after October 1, 1985, and prior to October 1, 1987, in which the

contract specifically provided that interest after judgment shall be at the contract rate.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:03 p.m. on the 4th day of August, 1999.

H.B. 604

SESSION LAW 1999-385

AN ACT TO CLARIFY THE CIRCUMSTANCES UNDER WHICH
AN ATTORNEY-IN-FACT MAY MAKE GIFTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-2(14) reads as rewritten:

"(14) Gifts to Charities, and to Individuals Other Than the Attorney-In-Fact. --

- a. Except as provided in G.S. 32A-2(14)b., to make gifts of any of the principal's property to any individual other than the attorney-in-fact or to any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subdivision "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.
- b. Except as provided in G.S. 32A-2(14)c., or unless gifts are expressly authorized by the power of attorney under G.S. 32A-2(15), a power described in G.S. 32A-2(14)a. may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or creditors of the estate of the attorney-in-fact.
- c. If the power described in G.S. 32A-2(14)a. is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by G.S. 32A-2(14)b. from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact.
- d. An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request the clerk of the superior court to issue an order to make a gift of the property of the principal."

Section 2. G.S. 32A-2(15) reads as rewritten:

"(15) Gifts to the Named Attorney-In-Fact. -- To make gifts to the attorney-in-fact named in the power of attorney or the estate, creditors, or creditors of the estate of the ~~attorney-in-fact.~~ attorney-in-fact, in accordance with the

principal's personal history of making or joining in the making of lifetime gifts."

Section 3. Section 1 of this act applies to all powers of attorney executed on or after October 1, 1995. Section 2 of this act becomes effective October 1, 1999, and applies to all powers of attorney executed on or after that date. Section 3 of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:07 p.m. on the 4th day of August, 1999.

H.B 1120

SESSION LAW 1999-386

AN ACT TO AUTHORIZE PUBLIC HOSPITALS TO ENGAGE IN INSTALLMENT PURCHASE FINANCING AND TO ISSUE REVENUE ANTICIPATION NOTES AND TO VALIDATE PRIOR CONVEYANCES BY MUNICIPALITIES OR HOSPITAL AUTHORITIES OF HOSPITAL FACILITIES SERVING AS COLLATERAL IN A TRANSACTION INVOLVING NORTH CAROLINA MEDICAL CARE COMMISSION BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) is amended by adding a new subdivision to read:

"(h) As used in this section, the term 'unit of local government' means any of the following:

- (12) A nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39."

Section 2. G.S. 160A-20 is amended by adding a new subsection to read:

"(e1) A nonprofit corporation or association operating or leasing a public hospital may only enter into a contract pursuant to this section if the nonprofit corporation or association will have an ownership interest in the property being financed, including a leasehold interest, and the security interest granted in such property being financed shall only be to the extent of such property interest. In addition, any contract entered into by a nonprofit corporation or association operating or leasing a public hospital pursuant to this section is subject to the approval of the city, county, hospital district, or hospital authority which owns such hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

- (1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by such entity.

- (2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.
- (3) The entering into of the contract would have a material adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or otherwise materially interfere with an anticipated financing by such entity."

Section 3. G.S. 159-170 reads as rewritten:

"§ 159-170. *Revenue anticipation notes.*

(a) Authorization; Term. -- A unit of local government or a nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39, is authorized to borrow money for the purpose of paying appropriations made or expenses budgeted or incurred for the current fiscal year in anticipation of the receipt of revenues, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year, and to issue its negotiable notes in evidence thereof. A nonprofit corporation or association operating or leasing a public hospital may only borrow money pursuant to this section if it is legally entitled to collect and pledge such revenues to the payment of the noted as provided in this section. A revenue anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) Limit on Amount; Disclosure. -- No revenue anticipation loan shall be made if the amount thereof, together with the amount of all revenue anticipation notes authorized or outstanding on the date the loan is authorized, would exceed eighty percent (80%) of the revenues of the issuing unit, unit or the nonprofit corporation or association operating or leasing a public hospital, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year. Each revenue anticipation note shall bear on its face a statement to the effect that it is payable solely from budgeted nontax revenues of the issuing unit and or the nonprofit corporation or association operating or leasing a public hospital and that the faith and credit of the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital are not pledged for the payment of the note, and note. Each note shall also bear on its face or reverse the following certificate signed by the finance officer: 'This note and all other revenue anticipation notes of (issuing unit) (issuer) authorized or outstanding as of (date) amount to eighty percent (80%) or less of the budgeted nontax revenues for the current fiscal year as of the above date.' No revenue anticipation note shall be valid without this certificate.

(c) Faith and Credit Not Pledged. -- Revenue anticipation notes issued under this section shall be special obligations of the issuing unit, unit or the nonprofit corporation or association operating or leasing a public hospital. Neither the credit nor the taxing power of the issuing unit unit or, in the case of revenue anticipation notes

issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital may be pledged for the payment of revenue anticipation notes, and no notes. No holder of a revenue anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital or the forfeiture of any of its property in connection with any default thereon.

(d) Any revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital pursuant to this section are subject to the approval of the city, county, hospital district, or hospital authority which owns the hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

- (1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by such entity.
- (2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.
- (3) The entering into of the contract would have a material adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or otherwise materially interfere with an anticipated financing by such entity."

Section 4. Notwithstanding the requirements of G.S. 131E-8, G.S. 131E-13, G.S. 131E-14, G.S. 153A-176, and Article 12 of Chapter 160A of the General Statutes, and any past compliance or failure to comply with those requirements, the prior conveyance by a municipality as defined in G.S. 131E-6(5), or by a hospital authority as defined in G.S. 131E-16(14), of a hospital facility that currently serves as collateral in a transaction involving North Carolina Medical Care Commission bonds issued under Part 10 of Article 3 of Chapter 143B of the General Statutes is hereby validated.

Section 5. This act is effective when it becomes law. Section 4 of this act shall not apply to litigation pending on or before the effective date.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:07 p.m. on the 4th day of August, 1999.

H.B. 1154

SESSION LAW 1999-387

AN ACT TO REQUIRE A ONE-YEAR SUSPENSION FOR ANY STUDENT WHO BRINGS OR POSSESSES A FIREARM OR EXPLOSIVE ON EDUCATIONAL PROPERTY OR AT A SCHOOL-SPONSORED CURRICULAR OR EXTRACURRICULAR ACTIVITY OFF EDUCATIONAL

PROPERTY AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-391(d1), as rewritten by Section 6 of S.L. 1999-257, reads as rewritten:

"(d1) A local board of education or superintendent shall suspend for 365 calendar days any student ~~who brings who:~~

(1) Brings onto educational property or to a school-sponsored curricular or extracurricular activity off educational property, or

(2) Possesses on educational property or at a school-sponsored curricular or extracurricular activity off educational property,

a weapon, as defined in G.S. 14-269.2(b), 14-269.2(b1), and ~~14-269.2(g), onto educational property, 14-269.2(g).~~ The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services."

Section 2. Effective December 1, 1999, G.S. 115C-391(d1), as rewritten by Section 1 of this act, reads as rewritten:

"(d1) A local board of education or superintendent shall suspend for 365 calendar days any student who:

(1) Brings onto educational property or to a school-sponsored curricular or extracurricular activity off educational property, or

(2) Possesses on educational property or at a school-sponsored curricular or extracurricular activity off educational property,

a weapon, as defined in G.S. 14-269.2(b), 14-269.2(b1), and ~~14-269.2(g), 14-269.2(g), and 14-269.2(h).~~ The local board of education upon recommendation by the superintendent may modify this suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended pursuant to this subsection in an alternative school setting or in another setting that provides educational and other services."

Section 3. G.S. 115C-391(d3), as enacted by Section 7 of S.L. 1999-257, reads as rewritten:

"(d3) A local board of education shall suspend for 365 calendar days any student who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that there is located on educational property or at a school-sponsored curricular or extracurricular activity off

educational property any device designed to destroy or damage property by explosion, blasting, or burning, or who, with intent to perpetrate a hoax, conceals, places, or displays any device, machine, instrument, or artifact on educational property or at a ~~school-related~~ school-sponsored curricular or extracurricular activity on or off educational property, so as to cause any person reasonably to believe the same to be a bomb or other device capable of causing injury to persons or property. The local board upon recommendation by the superintendent may modify either suspension requirement on a case-by-case basis that includes, but is not limited to, the procedures established for the discipline of students with disabilities and may also provide, or contract for the provision of, educational services to any student suspended under this subsection in an alternative school setting or in another setting that provides educational and other services. For purposes of this subsection and subsection (d1) of this section, the term 'educational property' has the same definition as in G.S. 14-269.2(a)(1)."

Section 4. Effective July 1, 2000, G.S. 20-11(n1) as created in Section 2 of S.L. 1999-243, reads as rewritten:

"(n1) Lose Control; Lose License.

(1) The following definitions apply in this subsection:

- a. Applicable State entity. -- The State Board of Education for public schools and charter schools, the State Board of Community Colleges for community colleges, or the Secretary of Administration for nonpublic schools and home schools.
- b. Certificate. -- A driving eligibility certificate that meets the conditions of subsection (n) of this section.
- c. Disciplinary action. -- An expulsion, a suspension for more than 10 consecutive days, or an assignment to an alternative educational setting for more than 10 consecutive days.
- d. Enumerated student conduct. -- One of the following behaviors that results in disciplinary action:
 1. The possession or sale of an alcoholic beverage or an illegal controlled substance on school property.
 2. ~~The possession or use~~ The bringing, possession, or use on school property of a weapon or firearm that resulted in disciplinary action under G.S. 115C-391(d1) or that could have resulted in that disciplinary action if the conduct had occurred in a public school.
 3. The physical assault on a teacher or other school personnel on school property.
- e. School. -- A public school, charter school, community college, nonpublic school, or home school.
- f. School administrator. -- The person who is required to sign certificates under subdivision (4) of subsection (n) of this section.

- g. School property. -- The physical premises of the school, school buses or other vehicles under the school's control or contract and that are used to transport students, and school-sponsored ~~or school-related~~ curricular or extracurricular activities that occur on or off the physical premises of the school.
- h. Student. -- A person who desires to obtain a permit or license issued under this section."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:40 p.m. on the 4th day of August, 1999.

S.B. 772

SESSION LAW 1999-388

AN ACT TO AUTHORIZE THE CREATION OF MUNICIPAL SERVICE DISTRICTS IN CERTAIN CITIES FOR URBAN AREA REVITALIZATION PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-536 reads as rewritten:

"§ 160A-536. *Purposes for which districts may be established.*

(a) Purposes. -- The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

- (1) Beach erosion control and flood and hurricane protection ~~works;~~ works.
- (1a) (For applicability see note) Any service, facility, or function which the municipality may by law provide in the city, and including but not limited to placement of utility wiring underground, placement of period street lighting, placement of specially designed street signs and street furniture, landscaping, specialized street and sidewalk paving, and other appropriate improvements to the rights-of-way that generally preserve the character of an historic district; provided that this subdivision only applies to a service district which, at the time of its creation, had the same boundaries as an historic district created under Part 3A of Article 19 of this ~~Chapter;~~ Chapter.
- (2) Downtown revitalization projects; projects.
- (2a) Urban area revitalization projects.
- (3) Drainage projects; projects.
- (3a) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or ~~systems;~~ systems.
- (4) Off-street parking ~~facilities;~~ and facilities.

(5) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21.

(b) Downtown Revitalization Defined. -- As used in this section "downtown revitalization projects" include by way of illustration but not limitation improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street, and other improvements intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area. In addition, a downtown revitalization project may, in order to revitalize a downtown area and further the public health, safety, welfare, and convenience, include the provision of city services or functions in addition to or to a greater extent than those provided or maintained for the entire city. A downtown revitalization project may also include promotion and developmental activities (such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area) designed to improve the economic well-being of the downtown area and further the public health, safety, welfare, and convenience. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a municipal service district shall not prejudice the city's authority to undertake urban renewal projects in the same area.

(c) Urban Area Revitalization Defined. -- As used in this section, the term 'urban area revitalization projects' includes the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section. As used in this section, the term 'urban area' means an area that (i) is located within a city whose population exceeds 150,000 according to the most recent annual population statistics certified by the State Planning Officer and (ii) meets one or more of the following conditions:

(1) It is the central business district of the city.
(2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.

(3) It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest

point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.

(4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities.

(d) Contracts. -- A city may provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof. Any contracts entered into pursuant to this paragraph shall specify the purposes for which city moneys are to be used and shall require an appropriate accounting for those moneys at the end of each fiscal year or other appropriate period."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law upon approval of the Governor at 10:11 p.m. on the 4th day of August, 1999.

S.B. 251

SESSION LAW 1999-389

AN ACT TO ALLOW THE HISTORIC REHABILITATION TAX CREDIT TO BE ALLOCATED BY A PASS-THROUGH ENTITY TO ITS OWNERS AND TO REQUIRE CORPORATIONS THAT ARE REQUIRED TO PAY FEDERAL-ESTIMATED INCOME TAX BY ELECTRONIC FUNDS TRANSFER TO PAY STATE-ESTIMATED INCOME TAX BY ELECTRONIC FUNDS TRANSFER.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3D.

"Historic Rehabilitation Tax Credits."

Section 2. G.S. 105-130.42(a) is recodified as G.S. 105-129.35 in Article 3D of Chapter 105 of the General Statutes.

Section 3. G.S. 105-130.42(b) is recodified as G.S. 105-129.36 in Article 3D of Chapter 105 of the General Statutes.

Section 4. G.S. 105-130.42(c) is recodified as G.S. 105-129.37 in Article 3D of Chapter 105 of the General Statutes.

Section 5. Article 3D of Chapter 105 of the General Statutes, as enacted and amended by this act, reads as rewritten:

"ARTICLE 3D.

"Historic Rehabilitation Tax Credits.

"§ 105-129.35. ~~Credit for rehabilitating income-producing historic structure.~~ income-producing historic structure.

(a) Credit. -- A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making ~~qualifying~~ qualified rehabilitation expenditures for a certified historic structure located in this State is allowed a credit ~~against the tax imposed by this Part. The amount of the credit is equal to~~ twenty percent (20%) of the expenditures that qualify for the federal credit.

(b) Allocation. -- Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as the amount of credit allocated to an owner does not exceed the owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the certified historic structure is placed in service. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

(c) Definitions. -- The following definitions apply in this section:

- (1) Certified historic structure. -- Defined in section 47 of the Code.
- (2) Pass-through entity. -- An entity or business, including a limited partnership, a general partnership, a joint venture, a Subchapter S Corporation, or a limited liability company, all of which is treated as owned by individuals or other entities under the federal tax laws, in which the owners report their share of the income, losses, and credits from the entity or business on their income tax returns filed with this State. For the purpose of this section, an owner of a pass-through entity is an individual or entity who is treated as an owner under the federal tax laws.
- (3) Qualified rehabilitation expenditures. -- Defined in section 47 of the Code.

"§ 105-129.36. Credit for rehabilitating Nonincome-Producing Historic Structure. ~~nonincome-producing historic structure.~~

(a) Credit. -- A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a certified State-certified historic structure located in this State is allowed a credit ~~against the tax imposed by this Part. The amount of the credit is equal to~~ thirty percent (30%) of the rehabilitation expenses. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand dollars (\$25,000) within a 24-month period. To claim the credit allowed by this subsection, the taxpayer must attach to the return a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection.

(b) Definitions. -- The following definitions apply in this subsection; section:

- (1) ~~Certified historic structure.~~ -- ~~A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.~~
- (2) Certified rehabilitation. -- Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer prior to the commencement of the work. ~~The expenditures must, within a 24-month period, exceed twenty-five thousand dollars (\$25,000). The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process.~~
- (3) Rehabilitation expenses. -- Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's basis. The term does not include the cost of acquiring the property, the cost attributable to the enlargement of an existing building, the cost of sitework expenditures, or the cost of personal property.
- (3a) State-certified historic structure. -- A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.
- (4) State Historic Preservation Officer. -- The Director of the Division of Archives and History or the Director's designee who acts to administer the historic preservation programs within the State.

(c) Rules. -- The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process required by this section.

"§ 105-129.37. Tax credited; credit limitations.

(a) Tax Credited. -- The credits provided in this Article are allowed against the income taxes levied in Article 4 of this Chapter.

(b) Credit Limitations. -- The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Any unused portion of the credit may be carried forward for the succeeding five years. ~~The A~~ credit allowed under this ~~section~~ Article may not exceed the amount of ~~tax imposed by this Part~~ the tax against which it is claimed for the

taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(c) Forfeiture for Disposition. -- A taxpayer who is required under section 50 of the Code to recapture all or part of the federal credit for rehabilitating an income-producing historic structure located in this State forfeits the corresponding part of the State credit allowed under G.S. 105-129.35 with respect to that historic structure. If the credit was allocated among the owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that the credit was allocated.

(d) Forfeiture for Change in Ownership. -- If an owner of a pass-through entity that has qualified for the credit allowed under G.S. 105-129.35 disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the rehabilitated historic structure is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the historic structure was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allowable credit is allocated equally among the five years in which the credit is claimed.

(e) Exceptions to Forfeiture. -- Forfeiture as provided in subsection (d) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(f) Liability From Forfeiture. -- A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

Section 6. G.S. 105-151.23(a) is recodified as G.S. 105-129.35; G.S. 105-151.23(b) is recodified as G.S. 105-129.36; and G.S. 105-151.23(c) is recodified as G.S. 105-129.37. Article 3D of Chapter 105 of the General Statutes, as amended by this act, incorporates both G.S. 105-130.42 and G.S. 105-151.23.

Section 7. G.S. 105-163.40 reads as rewritten:

"§ 105-163.40. *Time for submitting declaration; time and method for paying estimated ~~tax~~ tax; form of payment.*

(a) Due Dates of Declarations. -- Declarations of estimated tax are due at the same time as the corporation's first installment payment. Installment payments are due as follows:

- (1) If, before the 1st day of the 4th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars (\$500.00), the corporation shall pay the estimated tax in four equal installments on or before the 15th day of the 4th, 6th, 9th and 12th months of the taxable year.
- (2) If, after the last day of the 3rd month and before the 1st day of the 6th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars (\$500.00), the corporation shall pay the estimated tax in three equal installments on or before the 15th day of the 6th, 9th and 12th months of the taxable year.
- (3) If, after the last day of the 5th month and before the 1st day of the 9th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars (\$500.00), the corporation shall pay the estimated tax in two equal installments on or before the 15th day of the 9th and 12th months.
- (4) If, after the last day of the 8th month and before the 1st day of the 12th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars (\$500.00), the corporation shall pay the estimated tax on or before the 15th day of the 12th month of the taxable year.

(b) Payment of Estimated Tax When Declaration Amended. -- When a corporation submits an amended declaration after making one or more installment payments on its estimated tax, the amount of each remaining installment shall be the amount that would have been payable if the estimate in the amended declaration was the original estimate, increased or decreased as appropriate by the amount computed by dividing:

- (1) The absolute value of the difference between:
 - a. The amount paid and
 - b. The amount that would have been paid if the estimate in the amended declaration was the original estimate by
- (2) The number of remaining installments.

(c) Short Taxable Year. -- Payment of estimated tax for taxable years of less than 12 months shall be made in accordance with rules promulgated by the Secretary.

(d) Form of Payment. -- A corporation that is required under the Code to pay its federal-estimated corporate income tax by electronic funds transfer must pay its State-estimated tax by electronic funds transfer."

Section 8. G.S. 105-241(b) reads as rewritten:

"(b) Electronic Funds Transfer. -- ~~The~~ Except as provided in G.S. 105-163.40, the Secretary shall not require a taxpayer to pay a tax by electronic funds transfer unless, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars (\$20,000) a month. The twenty thousand dollar (\$20,000) threshold applies separately to each tax. The applicable period for a tax is a 12-month period, designated by the Secretary, preceding the imposition or review of the payment requirement. The requirement that a taxpayer pay a tax by electronic funds transfer remains in effect until suspended by the Secretary. Every 12 months after requiring a taxpayer to pay a tax by electronic funds transfer, the Secretary shall determine whether, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars (\$20,000) a month. If it was not, the Secretary shall suspend the requirement that the taxpayer pay the tax by electronic funds transfer and shall notify the taxpayer in writing that the requirement has been suspended."

Section 9. Sections 1 through 6 of this act are effective for taxable years beginning on or after January 1, 1999. G.S. 105-129.35(b), as amended by this act, is repealed effective January 1, 2002, for property placed in service on or after that date. Sections 7 and 8 of this act become effective for taxable years beginning on or after January 1, 2000. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law upon approval of the Governor at 10:34 p.m. on the 4th day of August, 1999.

H.B. 1222

SESSION LAW 1999-390

AN ACT TO IMPROVE THE STATE COURT SYSTEM BY CREATING A STATE JUDICIAL COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 7A.

"State Judicial Council.

"§ 7A-49.4. *Composition of State Judicial Council.*

(a) The State Judicial Council shall consist of 17 members as follows:

- (1) The Chief Justice, who chairs the Council;
- (2) The Chief Judge of the Court of Appeals;
- (3) A district attorney chosen by the Conference of District Attorneys;
- (4) A public defender chosen by the public defenders;

- (5) A superior court judge chosen by the Conference of Superior Court Judges;
- (6) A district court judge chosen by the Conference of District Court Judges;
- (7) A clerk of superior court chosen by the Association of Clerks of Superior Court of North Carolina;
- (8) A magistrate appointed by the North Carolina Magistrates' Association;
- (9) An attorney appointed by the Council of the State Bar;
- (10) One attorney and one nonattorney appointed by the Chief Justice;
- (11) One nonattorney and one attorney appointed by the Governor;
- (12) One nonattorney and one attorney appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives; and
- (13) One nonattorney and one attorney appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(b) The Chief Justice and the Chief Judge shall be members of the State Judicial Council during their terms in those judicial offices. The terms of the other members selected initially for the State Judicial Council shall be as follows:

- (1) One year. -- The district court judge, the attorney appointed upon the recommendation of the President Pro Tempore of the Senate, and the attorney appointed upon the recommendation of the Speaker of the House of Representatives.
- (2) Two years. -- The district attorney, the magistrate, the nonattorney appointed by the Governor, and the nonattorney appointed by the Chief Justice.
- (3) Three years. -- The public defender, the attorney appointed by the Council of the State Bar, the nonattorney appointed upon the recommendation of the President Pro Tempore of the Senate, and the nonattorney appointed upon the recommendation of the Speaker of the House of Representatives.
- (4) Four years. -- The superior court judge, the clerk of superior court, the attorney appointed by the Governor, and the attorney appointed by the Chief Justice.

After these initial terms, the members of the State Judicial Council shall serve terms of four years. All terms of members shall begin on January 1 and end on December 31. No member may serve more than two consecutive full terms. Any vacancy on the Council shall be filled by a person appointed by the official or entity who appointed the person vacating the position.

(c) If an official or entity is authorized to appoint more than one member of the State Judicial Council, the members appointed by that official or entity must reside in different judicial districts.

(d) No incumbent member of the General Assembly or incumbent judicial official, other than the ones specifically identified by office in subsection (a) of this section, may serve on the State Judicial Council.

(e) The appointing authorities shall confer with each other and attempt to arrange their appointments so that the members of the State Judicial Council fairly represent each area of the State, both genders, and each major racial group.

"§ 7A-49.5. Duties of the State Judicial Council.

(a) The State Judicial Council shall:

- (1) Study the judicial system and report periodically to the Chief Justice on its findings;
- (2) Advise the Chief Justice on priorities for funding;
- (3) Review and advise the Chief Justice on the budget prepared by the Director of the Administrative Office of the Courts for submission to the General Assembly;
- (4) Study and recommend to the General Assembly the salaries of justices and judges;
- (5) Recommend to the General Assembly changes in the expense allowances, benefits, and other compensation for judicial officials;
- (6) Recommend the creation of judgeships; and
- (7) Advise or assist the Chief Justice, as requested, on any other matter concerning the operation of the courts.

(b) The State Judicial Council, with the assistance of the Director of the Administrative Office of the Courts, shall recommend to the Chief Justice performance standards for all courts and all judicial officials and shall recommend procedures for periodic evaluation of the court system and individual judicial officials and employees. If these standards are implemented by the Chief Justice, the Director of the Administrative Office of the Courts shall inform each judicial official of the standards being used to evaluate that official's performance. If implemented, the evaluation of each judge shall include assessments from other judges, litigants, jurors, and attorneys, as well as a self-evaluation by the judge. Summaries of the evaluations of justices and judges shall be made available to the public, in a manner to be determined by the Council, but the data collected in producing the evaluations shall not be a public record.

(c) The State Judicial Council shall study and recommend guidelines for the assignment and management of cases, including the identification of different kinds of cases for different kinds of resolution. If the Chief Justice decides to implement these guidelines, the guidelines may provide that, except for good cause, each civil case subject to assignment to a trial judge should be directed first to an appropriate form of alternative dispute resolution. The guidelines may also provide for posttrial alternative dispute resolution before or as part of an appeal. The guidelines should not require absolute uniformity from district to district and should allow case management personnel within each district the flexibility to direct cases to the most appropriate means of resolution in that district.

(d) The State Judicial Council shall monitor the use of alternative dispute resolution throughout the court system and, with the assistance of the Director of the Administrative Office of the Courts and the Dispute Resolution Commission, evaluate the effectiveness of those programs.

(e) The State Judicial Council may recommend changes in the boundaries of the judicial districts or divisions.

(f) The State Judicial Council shall monitor the administration of justice and assess the effectiveness of the Judicial Branch in serving the public and to advise the Chief Justice and the General Assembly on changes needed to assist the General Court of Justice in better fulfilling its mission.

"§ 7A-49.6. Compensation of the State Judicial Council.

Members of the State Judicial Council who are not officers or employees of the State shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5. Members of the State Judicial Council who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rate set out in G.S. 138-6."

Section 2. The Judicial Department shall implement this act using funds appropriated to the Department for travel and subsistence to reimburse members of the State Judicial Council as provided in G.S. 7A-49.6.

Section 3. This act becomes effective January 1, 2000.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law upon approval of the Governor at 10:20 p.m. on the 4th day of August, 1999.

S.B. 345

SESSION LAW 1999-391

AN ACT TO REQUIRE THAT RECONSIDERATION AND APPEAL OF UTILIZATION REVIEW NONCERTIFICATION BE EVALUATED BY MEDICAL DOCTORS LICENSED TO PRACTICE IN THIS STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-50-61(d) reads as rewritten:

"(d) Program Operations. -- In every utilization review program, an insurer or URO shall use documented clinical review criteria that are based on sound clinical evidence and that are periodically evaluated to assure ongoing efficacy. An insurer may develop its own clinical review criteria or purchase or license clinical review criteria. Qualified health care professionals shall administer the utilization review program and oversee review decisions under the direction of a medical doctor. A medical doctor licensed to practice medicine in this State shall evaluate the clinical appropriateness of noncertifications. Compensation to persons involved in utilization review shall not contain any direct or indirect incentives for them to make any

particular review decisions. Compensation to utilization reviewers shall not be directly or indirectly based on the number or type of noncertifications they render. In issuing a utilization review decision, an insurer shall: obtain all information required to make the decision, including pertinent clinical information; employ a process to ensure that utilization reviewers apply clinical review criteria consistently; and issue the decision in a timely manner pursuant to this section."

Section 2. G.S. 58-50-61(i) reads as rewritten:

"(i) Requests for Reconsideration. -- An insurer may establish procedures for informal reconsideration of noncertifications. The reconsideration shall be conducted between the covered person's provider and a medical doctor licensed to practice medicine in this State designated by the insurer. An insurer shall not require a covered person to participate in an informal reconsideration before the covered person may appeal a noncertification under subsection (j) of this section."

Section 3. G.S. 58-50-61(j) reads as rewritten:

"(j) Appeals of Noncertifications. -- Every insurer shall have written procedures for appeals of noncertifications by covered persons or their providers acting on their behalves, including expedited review to address a situation where the time frames for the standard review procedures set forth in this section would reasonably appear to seriously jeopardize the life or health of a covered person or jeopardize the covered person's ability to regain maximum function. Each appeal shall be evaluated by a medical doctor licensed to practice medicine in this State who was not involved in the noncertification."

Section 4. G.S. 58-50-61(l) reads as rewritten:

"(l) Expedited Appeals. -- An expedited appeal of a noncertification may be requested by a covered person or his or her provider acting on the covered person's behalf only when a nonexpedited appeal would reasonably appear to seriously jeopardize the life or health of a covered person or jeopardize the covered person's ability to regain maximum function. The insurer may require documentation of the medical justification for the expedited appeal. The insurer shall, in consultation with a medical doctor, doctor licensed to practice medicine in this State, provide expedited review, and the insurer shall communicate its decision in writing to the covered person and his or her provider as soon as possible, but not later than four days after receiving the information justifying expedited review. The written decision shall contain the provisions specified in subsection (k) of this section. If the expedited review is a concurrent review determination, the insurer shall remain liable for the coverage of health care services until the covered person has been notified of the determination. An insurer is not required to provide an expedited review for retrospective noncertifications."

Section 5. This act is effective when it becomes law and applies to utilization reviews conducted on or after January 1, 2000.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:26 p.m. on the 4th day of August, 1999.

S.B. 499

SESSION LAW 1999-392

AN ACT TO INCREASE THE FEES FOR REGISTRATION OF BOATS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-4 reads as rewritten:

"§ 75A-4. *Identification numbers required.*

Every vessel on the waters of this State shall be ~~numbered~~, numbered, except those vessels exempted from numbering under G.S. 75A-7. No person shall operate or give permission for the operation of any vessel on such waters unless the vessel is numbered in accordance with this Chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless

- (1) The certificate of number awarded to such vessel is in full force and effect, and
- (2) The identifying number set forth in the certificate of number is displayed on each side of the bow of such vessel."

Section 2. G.S. 75A-5(a) reads as rewritten:

"(a) The owner of each vessel requiring numbering by this State shall file an application for number with the Wildlife Resources Commission on forms approved by it. The application shall be signed by the owner of the vessel, or his agent, and shall be accompanied by a fee of ~~eight dollars (\$8.00)~~ ten dollars (\$10.00) for a one-year period or by a fee of ~~twenty dollars (\$20.00)~~ twenty-five dollars (\$25.00) for a three-year period; provided, however, there shall be no fee charged for vessels owned and operated by nonprofit rescue squads if they are operated exclusively for rescue purposes, including rescue training. The applicant shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall have the same entered upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the vessel and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules of the Commission in order that it may be clearly visible. The number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the vessel immediately following the number. The certificate of number shall be pocket size and shall be available at all times for inspection on the vessel for which issued, whenever such vessel is in operation. Provided, however, any person charged with failing to so carry such certificate of number shall not be

convicted if he produces in court a certificate of number theretofore issued to him and valid at the time of his arrest."

Section 3. G.S. 75A-5(c) reads as rewritten:

"(c) Should the ownership of a vessel change, a new application form with a fee of ~~eight dollars (\$8.00)~~ ten dollars (\$10.00) for a one-year period or by a fee of ~~twenty dollars (\$20.00)~~ twenty-five dollars (\$25.00) for a three-year period shall be filed with the Wildlife Resources Commission and a new certificate bearing the same number shall be awarded the new owner in the manner as provided for in an original award of number. In case a certificate should become lost, a new certificate bearing the same number shall be issued upon payment of a fee of two dollars (\$2.00). Possession of the certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears therein is the owner of the boat referred to therein."

Section 4. G.S. 75A-5(h) reads as rewritten:

"(h) (Effective July 1, 1999) Each certificate of number awarded pursuant to this Chapter must be renewed on or before the first day of the month next succeeding that during which the same expires; otherwise, such certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the Wildlife Resources Commission and shall be accompanied by a fee of ~~eight dollars (\$8.00)~~ ten dollars (\$10.00) for a one-year period or by a fee of ~~twenty dollars (\$20.00)~~ twenty-five dollars (\$25.00) for a three-year period; provided, there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section."

Section 5. G.S. 75A-3(c) reads as rewritten:

"(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. Gasoline excise tax revenue is credited to the Account under G.S. 105-449.126. Revenue in the Account shall be used by the Wildlife Resources Commission, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. At least three dollars (\$3.00) of each one-year vessel registration fee and at least nine dollars (\$9.00) of each three-year vessel registration fee collected under the numbering provisions of G.S. 75A-5 shall be used for boating access area acquisition, development, and maintenance."

Section 6. Section 5 of this act becomes effective January 1, 2000, and applies to fees collected from each boat registration in effect on or after that date. The remainder of this act becomes effective January 1, 2000.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law upon approval of the Governor at 10:24 p.m. on the 4th day of August, 1999.

S.B. 941

SESSION LAW 1999-393

AN ACT TO UPDATE THE MANUFACTURED HOUSING BOARD STATUTES, TO PROVIDE FOR CONTINUING EDUCATION FOR LICENSEES, TO IMPROVE THE BUYER CANCELLATION LAW, AND TO UPDATE THE LAW ON MANUFACTURED HOME STANDARDS TO COMPLY WITH FEDERAL LAWS AND REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 9A.

"North Carolina Manufactured Housing Board --
Manufactured Home Warranties.

"§ 143-143.8. *Purpose.*

The General Assembly finds that mobile manufactured homes have become a primary housing resource for many of the citizens of North Carolina. The General Assembly finds further that it is the responsibility of the mobile manufactured home industry to provide homes which are of reasonable quality and safety and to offer warranties to buyers that provide a means of remedying quality and safety defects in mobile manufactured homes. The General Assembly also finds that it is in the public interest to provide a means for enforcing such warranties.

Consistent with these findings and with the legislative intent to promote the general welfare and safety of mobile manufactured home residents in North Carolina, the General Assembly finds that the most efficient and economical way to assure safety, quality and responsibility is to require the licensing and bonding of all segments of the mobile manufactured home industry. The General Assembly also finds that it is reasonable and proper for the mobile manufactured home industry to cooperate with the Commissioner of Insurance, through the establishment of the North Carolina Manufactured Housing Board, to provide for a comprehensive framework for industry regulations.

"§ 143-143.9. *Definitions.*

~~The following words, terms and phrases, when used in this Article, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning; definitions apply in this Article:~~

- (1) ~~"Board" means the Board. -- The North Carolina Manufactured Housing Board.~~

- (2) ~~"Buyer"~~ means a Buyer. -- A person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.
- (3) ~~"Code"~~ means the appropriate Code. -- Engineering standards adopted by the Commissioner.
- (4) ~~"Commissioner"~~ means the Commissioner. -- The Commissioner of Insurance of the State of North Carolina.
- (5) ~~"Department"~~ means the Department. -- The Department of Insurance of the State of North Carolina.
- (5a) License. -- A license issued under this Article.
- (5b) Licensee. -- A person who has been issued a license under this Article by the North Carolina Manufactured Housing Board.
- (6) ~~"Manufactured home" or "mobile home"~~ means a Manufactured home. -- A structure, transportable in one or more sections, which, in the travelling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.
- (7) ~~"Manufactured home dealer" or "dealer"~~ means any Manufactured home dealer or dealer. -- Any person engaged in the business of buying, buying or selling or dealing in manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who buys, sells or deals in buys or sells three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms 'selling' and 'sale' include lease-purchase transactions. The term 'manufactured home dealer' does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.
- (8) ~~"Manufactured home manufacturer" or "manufacturer"~~ means any Manufactured home manufacturer or manufacturer. -- Any person, resident or nonresident, who manufactures or assembles manufactured homes for sale to dealers in North Carolina.
- (9) ~~"Manufactured home salesman" or "salesman"~~ means any Manufactured home salesperson or salesperson. -- Any person employed ~~as a salesman~~ by a manufactured home dealer to sell manufactured homes to buyers.
- (10) ~~"Person"~~ means any Person. -- Any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.

- (11) ~~"Responsible party" means a~~ Responsible party. -- A manufacturer, dealer, supplier, or set-up contractor.
- (12) ~~"Setup" means the~~ Setup. -- The operations performed at the occupancy site which render a manufactured home fit for habitation. ~~Such operations include, but are not limited to, transportation by a bona fide private or exempt carrier operating under the provisions of the Public Utilities Act, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the North Carolina Utilities Commission.~~
- (13) ~~"Set-up contractor" means a~~ Set-up contractor. -- A person who engages in the business of performing ~~set-up operations~~ setups for compensation in North Carolina.
- (14) ~~"Substantial defect" means any~~ Substantial defect. -- Any substantial deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any structural element, utility system or component part of the manufactured home which fails to comply with the Code.
- (15) ~~"Supplier" means the~~ Supplier. -- The original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, panelling, siding, trusses, and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer.

"§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.

(a) There is ~~hereby~~ created the North Carolina Manufactured Housing Board within the ~~Department of Insurance.~~ Department. The Board shall be composed of nine members as follows:

- (1) The Commissioner of Insurance or his ~~designee~~ designee.
- (2) A manufactured home ~~manufacturer~~ manufacturer.
- (3) A manufactured home ~~dealer~~ dealer.
- (4) A representative of the banking and finance ~~business~~ business.
- (5) A representative of the insurance ~~industry~~ industry.
- (6) A manufactured home ~~supplier~~ supplier.
- (7) A set-up ~~contractor~~ contractor.
- (8) Two representatives of the general public.

The Commissioner of ~~Insurance~~ or his designee shall ~~serve as chairman of chair~~ the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the

Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint the representative of the banking and finance industry and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint the manufactured home supplier and set-up contractor. The Commissioner of Insurance shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three years to begin on October 1, 1981, except that the persons appointed by the General Assembly upon the recommendation of the Speaker shall serve two-year terms to expire on September 30, 1985, and the persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall serve for three-year terms to expire on September 30, 1986, years. In the event of any vacancy of a position appointed by the Governor or Commissioner of Insurance, Commissioner, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The member of the Board representing the general public shall have no financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner of Insurance and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Article. In no case shall any salary, expense, or other obligation of the Board be charged against the Treasury General Fund of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article. At the end of the fiscal year, the Board shall retain fifteen percent (15%) of the unexpended funds collected

and received during that year. The remaining eighty-five percent (85%) of these funds shall be credited to the General Fund.

(b) In accordance with the provisions of this Article, the ~~North Carolina Manufactured Housing~~ Board shall have the following powers and duties:

- (1) To issue licenses to manufacturers, dealers, ~~salesmen~~ salespersons, and set-up ~~contractors~~ contractors.
- (2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing ~~salesmen~~ salespersons.
- (3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this ~~Article~~ and Article.
- (4) To ~~promulgate~~ adopt rules in accordance with Chapter 150B of the General Statutes as are necessary to carry out the provisions of this Article.
- (5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer.

"§ 143-143.11. License required; application for license.

(a) It shall be unlawful for any manufactured home manufacturer, dealer, ~~salesman~~ salesperson, or set-up contractor to engage in business as such in this State without first obtaining a license from the Board, as provided in this Article. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person.

(b) Application for ~~such~~ the license shall be made to the Board at such time, in such form, and contain ~~such~~ the information ~~as the Board shall require~~ requires, and shall be accompanied by the ~~required~~ required fee established by the Board. ~~Such~~ The fee shall not exceed three hundred dollars (\$300.00) for any license.

(c) In ~~such~~ the application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All ~~such of this~~ information shall be considered by the Board in determining the fitness of the ~~applicant to engage in the business for which a license is sought~~ applicant.

(d) All licenses ~~that are granted~~ shall expire, unless ~~sooner~~ revoked or suspended, on June 30 of each year following the date of issue.

(e) Every ~~registrant under this Chapter~~ licensee shall, on or before the first day of July of each year, obtain a renewal of a license for the ~~ensuing next year~~ ensuing next year, by application, accompanied by the ~~required fee; and upon fee~~ required fee. Upon failure to renew, ~~his~~ a license ~~shall~~ shall automatically ~~expire; but such~~ expires. The license may be renewed at any time within one year upon payment of the ~~prescribed renewal fee and upon~~ prescribed renewal fee and ~~evidence satisfactory to the Board that the applicant has not engaged in business as a manufactured home manufacturer, dealer, salesman or~~ evidence satisfactory to the Board that the applicant has not engaged in

~~set up contractor after expiration of the license and is otherwise eligible for registration under the provisions of this Chapter, renewal fee.~~

(f) Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. The fee for a supplemental license shall be established by the Board and shall not exceed three hundred dollars (\$300.00), provided that no supplemental license shall be required for a place of business operated by a licensee that is used exclusively for storage.

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home ~~salesman~~ salesperson will be allowed to engage in business during the time period after making application for a license but before such license is granted.

(h) ~~To obtain~~ As a prerequisite to obtaining a license under this Article, a person ~~must~~ may be required to pass an examination prescribed by the Board that is based on the ~~North Carolina Manufactured/Mobile Home Regulations and Administrative Procedures required to enforce the Codes~~, Code, this Article, and any other subject matter considered relevant by the Board.

"§ 143-143.11A. Notification of change of address; service of notice.

(a) Every applicant for a license shall inform the Board of the applicant's business address. Every licensee shall give written notification to the Board of any change in the licensee's business address, for whatever reason, within 10 business days after the licensee moves to a new address or a change in the address takes place. A violation of this subsection shall not constitute grounds for revocation, suspension, or non-renewal of a license or for the imposition of any other penalty by the Board.

(b) Notwithstanding any other provision of law, whenever the Board is authorized or required to give notice to a licensee under this Article, the notice may be delivered personally to the licensee or sent by first-class mail to the licensee at the address provided to the Board under subsection (a) of this section. Notice shall be deemed given four days after mailing, and any Department employee may certify that notice has been given.

"§ 143-143.11B. Continuing education.

(a) The Board may establish programs and requirements of continuing education for licensees, but shall not require licensees to complete more than eight credit hours of continuing education. Prior to the renewal of a license, a licensee shall present evidence to the Board that he or she has completed the required number of continuing education hours in courses approved by the Board during the two months immediately preceding the expiration of his or her license.

(b) The Board may establish nonrefundable fees for the purpose of providing staff and resources to administer continuing education programs, and may establish nonrefundable course application fees, not to exceed one hundred fifty dollars (\$150.00), for the Board's review and approval of proposed continuing education courses. The

Board may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars (\$75.00) for the annual renewal of course approval. The Board may also require a course sponsor to pay a fee, not to exceed five dollars (\$5.00) per credit hour per licensee, for each licensee completing an approved continuing education course conducted by the sponsor. The Board may award continuing education credit for a course that has not been approved by the Board or for related educational activity and may prescribe the procedures for a licensee to submit information on the course or related educational activity for continuing education credit. The Board may charge the licensee a fee not to exceed fifty dollars (\$50.00) for each course or activity submitted.

(c) The Board may adopt any reasonable rules not inconsistent with this Article to give purpose and effect to the continuing education requirement, including rules that govern:

- (1) The content and subject matter of continuing education courses.
- (2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.
- (3) The methods of instruction.
- (4) The computation of course credit.
- (5) The ability to carry forward course credit from one year to another.
- (6) The waiver of or variance from the continuing education requirement for hardship or other reasons.
- (7) The procedures for compliance and sanctions for noncompliance.

(d) The license of any person who fails to comply with the continuing education requirements under this section shall lapse. The Board may, for good cause shown, grant extensions of time to licensees to comply with these requirements. Any licensee who, after obtaining an extension, offers evidence satisfactory to the Board that he or she has satisfactorily completed the required continuing education courses shall be deemed in compliance with this section.

(e) A manufactured home manufacturer or manufacturer is exempt from the requirements of this section.

"§ 143-143.12. Bond required.

(a) A person licensed as a manufactured home ~~salesman~~ salesperson shall not be required to furnish a bond, but each applicant approved by the Board for license as a manufacturer, dealer, or set-up contractor shall furnish a corporate surety bond, cash bond or fixed value equivalent ~~thereof~~ in the following amounts:

- (1) For a ~~manufactured~~ manufacturer, two thousand dollars (\$2,000) per manufactured home manufactured in the prior license year, up to a maximum of one hundred thousand dollars (\$100,000). When no manufactured homes were produced in the prior year, the amount required shall be based on the estimated number of manufactured homes to be produced during the current ~~year~~ year.

- (2) For a dealer ~~who buys, sells, or deals in manufactured homes and~~ who has four or less places of business, the amount shall be twenty-five thousand dollars ~~(\$25,000); (\$25,000).~~
- (3) For a dealer ~~who buys, sells, or deals in manufactured homes and~~ who has more than four places of business, the amount shall be fifty thousand dollars ~~(\$50,000); (\$50,000).~~
- (4) For a set-up contractor, the amount shall be five thousand dollars (\$5,000).

(b) A corporate surety bond shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Article. A cash bond or fixed value equivalent ~~thereof~~ shall be approved by the Board as to form and terms of deposits in order to secure the ultimate beneficiaries of the bond. A corporate surety bond shall be for a one-year period, and a new bond or a proper continuation certificate shall be delivered to the Board at the beginning of each subsequent one-year period.

(c) Any buyer of a manufactured home who suffers any loss or damage by any act of a licensee that constitutes a violation of this Article ~~shall have the right to may~~ institute an action to recover against ~~such~~ the licensee and the surety.

(d) The Board may adopt rules to assure satisfaction of claims.
 "§ 143-143.13. Grounds for denying, suspending, or revoking license; licenses; civil penalties.

(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

- (1) ~~Material~~ Making a material misstatement in application for license; license.
- (2) ~~Failure Failing~~ to post an adequate corporate surety bond, cash bond or fixed value ~~equivalent thereof; equivalent.~~
- (3) Engaging in the business of manufactured home manufacturer, dealer, ~~salesman~~ salesperson, or set-up contractor without first obtaining a license from the ~~Board; Board.~~
- (4) ~~Failure Failing~~ to comply with the warranty service obligations and claims procedure established by this ~~Article; Article.~~
- (5) ~~Failure Failing~~ to comply with the ~~set-up and tie-down set-up~~ requirements established by this ~~Article; Article.~~
- (6) ~~Having knowingly failed or refused~~ Failing or refusing to account for or to pay over moneys or other valuables belonging to others ~~which that~~ have come into licensee's possession arising out of the sale of manufactured ~~homes; homes.~~
- (7) ~~Use of~~ Using unfair methods of competition or ~~committing~~ unfair or deceptive ~~commercial acts or practices; practices.~~
- (8) ~~Failure Failing~~ to comply with any provision of this ~~Article; Article.~~

- (9) ~~Failure~~ Failing to appear for a hearing before the Board or for a prehearing conference with a person or persons designated by the Board upon due after proper notice or failing to follow directives comply with orders of the Board issued pursuant to this Article; Article.
- (10) Employing unlicensed retail salesmen; salespersons.
- (11) ~~Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this Article or selling, to dealers not licensed pursuant to this Article, manufactured homes which are to be sold in this State to buyers as defined in this Article; Offering for sale manufactured homes manufactured or assembled by unlicensed manufacturers or selling manufactured homes to unlicensed dealers for sale to buyers in this State.~~
- (12) Conviction of a felony or any crime involving moral turpitude; turpitude.
- (13) ~~Having had a license revoked, suspended or denied by the Board under this Article; Board;~~ or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this Article; Article.
- (14) ~~Knowingly engaging~~ Employing or contracting with any person to perform set-up operations setups who is not licensed by the Board as a set-up contractor.

(b) Repealed by Session Laws 1985, c. 666, s. 38.

(c) In addition to the authority to deny, suspend, or revoke a license under this Article, the Board also has the authority to may impose a civil penalty upon any person violating the provisions of this Article. Upon a finding by the Board of a violation of this Article, the Board shall direct order the payment of a penalty of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. Each day during which a violation occurs shall constitute a separate offense. The penalty shall be payable to the Board. The Board shall remit the clear proceeds of penalties provided for in this subsection to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State. Nothing in this subsection shall prevent the Board from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty.

"§ 143-143.14. Notice and hearing. Hearings; rules.

(a) License suspensions, revocations, and renewal refusals are subject to the provisions of Chapter 150B of the General Statutes.

(b) If the Board finds that an applicant has not met the requirements for licensure, the Board shall refuse to issue the applicant a license and shall notify the applicant in writing of the denial and the grounds for the denial. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 143-143.13. Within 30 days after receipt of a notification that an application for a license has been denied, the applicant may make a written request for a review by a member of the Department staff designated by the chairman chair of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written request for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.

(c) The Board may adopt rules for hearings and prehearing conferences under this Article, and the rules may include provisions for prefiled evidence, the use of evidence, testimony of parties, prehearing statements, prehearing conference procedures, settlement conference procedures, discovery, subpoenas, sanctions, motions, intervention, consolidation of cases, continuances, and the rights and responsibilities of parties and witnesses.

~~"§ 143-143.15. Set-up and tie-down~~ Set-up requirements.

(a) ~~Manufactured homes shall be set up and anchored~~ in accordance with the standards adopted by the Commissioner.

(b) ~~In the event that~~ If a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage ~~of a nature that indicates the manufactured home was not anchored or tied down~~ set up in the manner required by this section, the insurer issuing the ~~homeowner's~~ insurance policy on the manufactured home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the ~~mobile manufactured~~ home was not properly ~~anchored or tied down, set up.~~

~~"§ 143-143.16. Warranties.~~

Each manufacturer, dealer and supplier of manufactured homes shall warrant each new manufactured home sold in this State ~~and the setup of each such manufactured home~~ in accordance with the warranty requirements prescribed by this section for a period of at least 12 months, measured from the date of delivery of the manufactured home to the buyer. The warranty requirements for each manufacturer, dealer, supplier and set-up contractor of manufactured homes are as follows:

- (1) The manufacturer warrants that all structural elements, plumbing systems, heating, cooling and fuel burning systems, electrical systems, and any other components

included by the manufacturer are manufactured and installed free from substantial ~~defect~~ defects.

(2) The dealer warrants:

- a. That any modifications or alterations made to the manufactured home by the dealer or authorized by the dealer are free from substantial defects. Alterations or modifications made by a dealer shall relieve the manufacturer of warranty responsibility as to the item altered or modified and any ~~damage resulting therefrom~~ resulting damage.
- b. That ~~set-up operations~~ a setup performed by the dealer on the manufactured home ~~are~~ is performed in compliance with ~~applicable standards adopted by the Commissioner for the installation of manufactured homes~~ the Code.
- c. ~~That, during the course of setup~~ That the setup and transportation of the manufactured home ~~performed by the dealer, substantial defects do not occur to the manufactured home~~ dealer did not result in substantial defects.

(3) The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of manufactured homes. The manufacturer's warranty shall remain in effect notwithstanding the existence of a supplier's warranty.

(4) The set-up contractor warrants that ~~set-up operations are performed~~ the manufactured home is set up in compliance with ~~applicable standards adopted by the Commissioner for the installation of manufactured homes~~ the Code and that ~~during the course of set-up operations performed on the manufactured home, substantial defects do not occur to the manufactured home~~ the setup did not result in any substantial defects.

"§ 143-143.17. *Presenting claims for warranties and substantial defects.*

(a) Whenever a claim for warranty service or about a substantial defect is made to a licensee, it shall be handled as provided ~~by~~ in this Article. ~~A~~ The licensee shall make a record ~~shall be made~~ of the name and address of each claimant and the date, substance, and disposition of each claim about a substantial defect. The licensee may request that a claim be in writing, but must nevertheless record it as provided above, and may not delay service pending receipt of the written claim.

(b) When the licensee notified is not the responsible party, he shall in writing immediately notify the claimant ~~of that fact, and shall also in writing immediately notify~~ and the responsible party of the claim. When a responsible party is asked to remedy defects, it may not fail to remedy those defects because another party may also be responsible. ~~Nothing herein shall prevent such~~ in this section prevents a party from obtaining compensation by way of contribution or subrogation from

another responsible party in accordance with any other provision of law or contract.

(c) Within the time limits provided in this Article, the licensee shall either resolve the claim or determine that it is not justified. At any time a licensee determines that a claim for warranty service is not justified in whole or in part he shall immediately notify the claimant in writing that the claim or part of the claim is rejected and why, and shall inform the claimant that he is entitled to complain to the Board, for which a complete mailing address shall be provided. ~~Within five working days of its receipt of a complaint, the Board shall send a complete copy thereof to the Attorney General and to the Commissioner of Insurance.~~

"§ 143-143.18. *Warranty service.*

(a) When a service agreement exists between or among a manufacturer, dealer and supplier to provide warranty service, the agreement shall specify which party is to remedy warranty defects. Every ~~such~~ service agreement shall be in writing. Nothing contained in such an agreement shall relieve the responsible party, as provided by this Article, of responsibility to perform warranty service. However, any licensee undertaking by such agreement to perform the warranty service obligations of another shall thereby himself become responsible both to that other licensee and to the buyer for his failure adequately to perform as agreed.

(b) When no service agreement exists for warranty service, the responsible party as designated by ~~the provisions of~~ this Article is responsible for remedying the warranty defect.

(c) A substantial defect shall be remedied within 45 days ~~of after~~ the receipt of written notification from the claimant. If no written notification is given, the defect shall be remedied within 45 days ~~of after~~ the mailing of notification by the Board, unless the claim is unreasonable or bona fide reasons exist for not remedying the defect within the 45-day period. The responsible party shall respond to the claimant in writing with a copy to the Board stating its reasons for not promptly remedying the defect and stating what further action is contemplated by the responsible party. Notwithstanding the foregoing provisions of this subsection, defects, which constitute an imminent safety hazard to life and health shall be remedied within five working days of receipt of the written notification of the warranty claim. An imminent safety hazard to life and health shall include but not be limited to (i) inadequate heating in freezing weather; (ii) failure of sanitary facilities; (iii) electrical shock, leaking gas; or (iv) major structural failure. The Board may suspend this five-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural catastrophes.

(d) When the person remedying the defect is not the responsible party as designated by the provisions of this Article, he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct ~~which~~ that coerces or requires a nonresponsible party to perform warranty service is a violation of this Article.

(e) Warranty service shall be performed at the site at which the ~~mobile~~ manufactured home is initially delivered to the buyer, except for components which can be removed for service without substantial expense or inconvenience to the buyer.

(f) Any dealer, manufacturer or supplier ~~shall have the right to~~ may complain to the Board when warranty service obligations under this Article are not being enforced.

"§ 143-143.19. Dealer alterations.

(a) No alteration or modification shall be made to a manufactured home by a dealer after shipment from the manufacturer's plant, unless such alteration or modification is authorized by this Article or the manufacturer. The dealer shall ensure that all authorized alterations and modifications are performed, if so required, by qualified persons as defined in subsection (d). An unauthorized alteration or modification performed by a ~~manufactured home~~ dealer or his agent or employee shall place primary warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his cost and attorney's fee from the dealer.

(b) An unauthorized alteration or modification of a manufactured home by the owner or his agent shall relieve the manufacturer of responsibility to remedy defects caused by such alteration or modification. A statement to this effect, together with a warning specifying those alterations or modifications which should be performed only by qualified personnel in order to preserve warranty protection, shall be displayed clearly and conspicuously on the face of the warranty. Failure to display such statement shall result in warranty responsibility on the manufacturer.

(c) The Board is authorized to ~~promulgate~~ adopt rules in accordance with Chapter 150B of the General Statutes ~~which that~~ define the alterations or modifications which must be made by qualified personnel. The Board may require qualified personnel only for those alterations and modifications which could substantially impair the structural integrity or safety of the manufactured home.

(d) In order to be designated as a person qualified to alter or modify a manufactured home, a person must comply with State licensing or competency requirements in skills relevant to performing alterations or modifications on manufactured homes.

"§ 143-143.20. Disclosure of manner used in determining length of manufactured homes.

In any advertisement or other communication regarding the length of a manufactured home, a manufacturer or dealer shall not include the coupling mechanism in describing the length of the home.

"§ 143-143.21: Repealed by Session Laws 1993, c. 409, s. 6, and applicable to purchase agreements executed on or after that date.

"§ 143-143.21A. ~~Refund of buyer deposit.~~ Purchase agreements; buyer cancellations.

(a) ~~A dealer shall record the following information in a retail purchase agreement for a manufactured home; home shall include all of the following:~~

- (1) A description of the manufactured home and all accessories included in the ~~purchase;~~ purchase.
- (2) The purchase price for the home and all ~~accessories;~~ accessories.
- (3) ~~The amount of deposit;~~ deposit or other payment toward or payment of the purchase price of the manufactured home and accessories that is made by the buyer.
- (4) ~~The date the retail purchase agreement is signed; and~~ signed.
- (5) ~~The estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.~~
- (6) The buyer's signature.
- (7) The dealer's signature.

(b) ~~A dealer must present to the buyer and obtain his signature to a retail purchase agreement at the time the deposit is received. The purchase agreement shall contain, in immediate proximity to the space reserved for the signature of the buyer and in at least ten point, all upper-case Gothic type, a statement in substantially the following form; statement:~~

'I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE PRIOR TO BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS CANCELLATION MUST BE IN WRITING. IF I ATTEMPT TO CANCEL THE PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER HAS NO MAY NOT HAVE ANY OBLIGATION TO REFUND THE ENTIRE AMOUNT OF MY DEPOSIT.' 'GIVE ME BACK ALL OF THE MONEY THAT I PAID THE DEALER.'

(c) ~~The~~ At the time the deposit or other payment toward or payment for the purchase price is received by the dealer, the dealer must shall give to the buyer a copy of the purchase agreement along with and a completed form in duplicate, captioned 'Notice of Cancellation', 'Cancellation,' which shall be attached to the purchase agreement, be easily detachable, and shall explain in plain English the buyer's right to cancel the agreement purchase and how that right can be exercised.

(d) ~~A dealer~~ The dealer shall refund to a buyer the full amount of a deposit on the purchase of a manufactured home return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement. In order to make an effective cancellation, the buyer must notify the dealer, in writing, of the buyer's intent to cancel the purchase agreement. To make the cancellation effective, the buyer shall give the

dealer written notice of the buyer's cancellation of the purchase. The dealer shall ~~make the refund promptly and, in any event, return the deposit or other payment toward or payment for the purchase price to the buyer~~ within 15 business days ~~from~~ after receipt of the notice of cancellation. For purposes of this section, 'business day' ~~shall mean Monday through Saturday, excluding~~ means any day except Sunday and legal holidays.

(e) If the buyer cancels the purchase agreement after the three-day cancellation period, but before the ~~home is delivered to the buyer, then,~~ sale is completed, and if:

- (1) ~~If the~~ The manufactured home is in the dealer's inventory, the dealer may retain from the deposit or other payment received from the buyer actual damages up to a maximum of ten percent (10%) of the purchase price; or
- (2) ~~If the~~ The manufactured home is specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's ~~deposit, deposit~~ or other payment received from the buyer.

"§ 143-143.22. *Inspection of service records.*

The Board ~~is authorized to~~ may inspect the ~~pertinent~~ service records of a manufacturer, dealer, supplier or set-up contractor relating to a written warranty claim or complaint made to the Board against ~~such~~ the manufacturer, dealer, supplier, or set-up contractor. Every licensee shall send to the Board upon request within 10 days a ~~true~~ copy of every document or record pertinent to any complaint or claim for service.

"§ 143-143.23. *Other remedies not excluded.*

Nothing in this ~~Article nor~~ Article, rules adopted by the Board, or any ~~decision by~~ action of the Board shall limit any right or remedy available to the buyer at common law or under any other statute, ~~nor limit~~ or any power or duty of the Attorney General.

"§ 143-143.24. *Engaging in business without license a Class 1 misdemeanor.*

If any person shall unlawfully act as a manufactured home manufacturer, dealer, ~~salesman, salesperson,~~ or set-up contractor without first obtaining a license from the ~~North Carolina Manufactured Housing Board,~~ as provided in this Article, he shall be guilty of a Class 1 misdemeanor.

"§ 143-143.25. *Staff support for Board.*

The Manufactured ~~Housing~~ Building Division of the Department shall provide clerical and other staff services required by the Board; and shall administer and enforce all provisions of this Article and all rules adopted under this Article, subject to the direction of the Board; except for powers and duties delegated by this Article to local units of government, other State agencies, or to any persons."

Section 2. Article 9B of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 9B.

"Uniform Standards Code for Manufactured Homes.

"§ 143-144. Short title.

This Article shall be known and may be cited as 'The Uniform Standards ~~Code~~ for Manufactured Homes Act.'

"§ 143-145. Definitions.

The following definitions apply in this Article:

~~Unless clearly indicated otherwise by context, the following words when used in this Article, for the purpose of this Article, shall have the meanings respectively ascribed to them in this section:~~

- (1) ~~"Certificate of compliance" means a certificate issued by an inspection department approved and licensed by the Council as being competent which certificate shall be valid only within the jurisdiction of the inspection department and on which certificate shall be recorded:~~
 - a. ~~The inspection department issuing such certificate;~~
 - b. ~~The date of issue;~~
 - c. ~~The serial or other identification number of such manufactured home and the name of the manufacturer;~~
 - d. ~~A certification that such manufactured home was on the day of inspection so opened that its entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;~~
 - e. ~~A certification that said manufactured home complies in full with the standards and rules and regulations prescribed in this Article.~~

Act. -- The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401, et seq., federal regulations adopted under the Act, and any laws enacted by the United States Congress that supersede or supplement the Act.

- (2) "Commissioner" means the Commissioner. -- The Commissioner of Insurance of the State of North Carolina, Carolina or an authorized designee of the Commissioner.
- (3) "Competent" shall mean competent to technically evaluate, test, and inspect in accordance with the standards, rules and regulations prescribed in this Article; the structural features, the plumbing, heating, electrical and air-conditioning systems and the materials used in the construction of a manufactured home.
- (4) "Council" means the North Carolina State Building Code Council, HUD. -- The United States Department of Housing and Urban Development or any successor agency.
- (5) "Inspection department" means a Inspection department. -- A North Carolina city or county building inspection department authorized by Chapter 160 160A or Chapter 153 153A of the General Statutes.
- (6) "Label of compliance" shall mean a permanent label or seal permanently attached to a manufactured home at completion of construction thereof which is issued by any independent, solvent, and trustworthy person approved and licensed by the

~~Council as being competent and as having and utilizing initial and follow-up manufacturing inspection services which provide the highest degree of quality control, and on which seal or label shall be recorded:~~

- ~~a. The person issuing such label or seal and the serial number of the label or seal;~~
- ~~b. The serial or other identification number of said manufactured home;~~
- ~~c. A certification that said manufactured home was evaluated, tested, and inspected in accordance with the standards and rules and regulations prescribed in this Article.~~

Label. -- The form of certification required by HUD to be permanently affixed to each transportable section of each manufactured home manufactured for sale to a purchaser in the United States to indicate that the manufactured home conforms to all applicable federal construction and safety standards.

- (7) ~~"Manufactured home" means a~~ Manufactured home. -- A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. 'Manufactured home' includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the ~~United States Department of Housing and Urban Development~~ HUD and complies with the standards established under the ~~National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5401, et seq. Act.~~

For manufactured homes built ~~prior to~~ before June 15, 1976, 'manufactured home' means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. 'Manufactured home' also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.

- (8) ~~"Person" means any corporation, partnership, association, voluntary organization or governmental agency of the United States or any state therein and does not mean an individual natural person.~~

"§ 143-146. Statement of policy; rule-making power.

(a) Manufactured homes, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of manufactured homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this State to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new manufactured homes, which are not so constructed as to provide reasonable safety and protection to their owners and users. This Article ~~is intended to provide~~ provides to the Commissioner all necessary authority to enable the State to obtain approval as a State Administrative Agency under the provisions of the ~~National Manufactured Housing Construction and Safety Standards Act of 1974, Act.~~

~~(b) The Commissioner shall make and promulgate rules embodying the standards for construction or manufacture of manufactured homes set by the Department of Housing and Urban Development under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974, as these standards may be amended.~~

~~(c) The Council is authorized to make and promulgate reasonable rules and regulations governing the procedure to be followed by a person or inspection department seeking to obtain a license pursuant to the provisions of this Article which shall provide opportunity for hearing before the Council on such application.~~

~~(d) In order to insure the highest degree of quality control in the manufacture of manufactured homes, the Council is further authorized and empowered to make and promulgate reasonable rules and regulations governing the initial and follow-up manufacturing inspection practices and procedures to be performed by any person granted a license to issue a label of compliance pursuant to this Article. In order to assure uniformity in standards and enforcement, such rules and regulations may also provide that any such licensee and its operations may be inspected from time to time by any other person or licensee designated by the Council who shall report the results of such examination to the Council. In such case the reasonable expense incurred by the examiner in making such inspection shall be borne by the licensee whose operations were examined.~~

~~(e) The Commissioner is authorized to promulgate such may adopt rules as are necessary to carry out the provisions of the Act and this Article, including rules regarding for consumer complaint procedures, and such other procedures and rules as are necessary to enable the~~

~~State to assume responsibility for the enforcement of the National Manufactured Housing Construction and Safety Standards Act of 1974, standards and regulations established and adopted by HUD under the Act.~~

~~"§ 143-147. Approval and licensing of persons and inspection departments. Structures built under previous standards.~~

~~(a) Any qualified person may make application to the Council for approval for license to issue labels of compliance. Any inspection department may make application to the Council for approval for issuing certificates of compliance. The Council after notice and hearing, if satisfied that such person or inspection department meets the qualifications prescribed in this Article, shall cause a license to be issued which license shall be valid for a consecutive period of 12 months and may be renewed for like consecutive periods on application to and approval by the Council;~~

~~(b) Any such license issued to a person other than an inspection department may be suspended or revoked after notice and hearing if such person:~~

- ~~(1) Is either insolvent, not competent, not independent, or untrustworthy;~~
- ~~(2) Has made false statements in his application to the Council for license;~~
- ~~(3) Fails or neglects to perform evaluations, testing, or manufacturing inspections in accordance with its proposed plans and procedures submitted to the Council or fails to comply with any applicable rules and regulations promulgated by the Council pursuant to G.S. 143-146(d);~~
- ~~(4) Has repeatedly, specifically or by implication authorized the attachment of its label of compliance to manufactured homes and such manufactured homes did not meet the standards and rules and regulations provided by this Article at the time said labels were attached.~~

~~(c) Any such license issued to an inspection department may be suspended or revoked after notice and hearing if such department:~~

- ~~(1) Is not competent;~~
- ~~(2) Has issued a certificate of compliance on a manufactured home when such manufactured home was not opened for inspection so that the entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;~~
- ~~(3) Has issued a certificate of compliance on a manufactured home and such manufactured home did not at the time of inspection meet the standards and rules and regulations provided by this Article.~~

~~The legal status of any structure built before the effective date of the Act shall not be affected by any changes made in this Article by the General Assembly.~~

~~"§ 143-148. Certain structures excluded from coverage.~~

The Commissioner may by rule provide for the exclusion of certain structures by certification in accordance with the ~~National Manufactured Housing Construction and Safety Standards Act of 1974, Act.~~

~~"§ 143-149. Necessity for obtaining label or certificate for purposes of sale.~~

~~No individual natural person, firm, partnership, association or corporation person shall after September 1, 1971, sell or offer for sale any manufactured home in this State, which manufactured home State that does not bear permanently attached thereto a label of compliance or for which manufactured home the individual natural person, firm, partnership, association, or corporation selling or offering to sell such manufactured home does not have a certificate of compliance; provided it shall be have a label. It is a defense to any prosecution for a violation of the provisions of this section if such individual natural person, firm, partnership, association or corporation shall show a person shows that a certificate of title for such the manufactured home as required by G.S. 20-52 was obtained prior to September 1, 1971, before June 15, 1976, or produces other satisfactory evidence on file with the North Carolina Department Division of Motor Vehicles that such the manufactured home was manufactured prior to September 1, 1971, before June 15, 1976.~~

~~"§ 143-150. No electricity to be furnished units not in compliance.~~

It is unlawful for any person to initially furnish electricity for use in any manufactured home without first ascertaining that the manufactured home and its electrical supply has been inspected pursuant to G.S. 143-139 by the inspection authority having jurisdiction and found to comply with the requirements of the State Electrical Code. The certificate of compliance issued by the inspection jurisdiction shall be accepted as evidence of compliance.

~~"§ 143-151. Penalties.~~

(a) ~~Whoever violates (i) the provisions of this Article; or (ii) Any person who is found by the Commissioner to have violated the provisions of the Act, this Article, or any rules promulgated adopted under this Article, shall be liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each violation. Each such violation shall constitute a separate violation with respect to for each manufactured home or with respect to for each failure or refusal to allow or perform an act required thereby, except that the by the Act, this Article, or any rules adopted under this Article. The maximum civil penalty may not exceed one million dollars (\$1,000,000) for any related series of violations occurring within one year from after the date of the first violation. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was willful, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of civil penalties provided for in this section shall be remitted~~

to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Any individual, ~~corporation,~~ or a director, officer or agent of a corporation who knowingly and willfully violates the Act, this ~~Article~~ Article, or any rules ~~promulgated~~ adopted under this Article in a manner ~~which~~ that threatens the health or safety of any purchaser is guilty of a Class ~~I misdemeanor.~~ I felony.

"§ 143-151.1. Enforcement.

The Commissioner of ~~Insurance or any inspection department~~ may initiate any appropriate action or proceeding to prevent, restrain, or correct any violation of the Act, this Article, or any rules adopted under this Article. The Commissioner, or any of his deputies or employees, upon showing proper credentials and in the discharge of their duties ~~pursuant to~~ under this Article, or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974, Act,~~ is authorized at reasonable hours and without advance notice to enter and inspect all factories, warehouses, or establishments in ~~the State of North Carolina~~ this State in which manufactured homes are manufactured, stored or held for sale.

"§ 143-151.2. Fees.

(a) The Commissioner ~~may~~ shall establish a monitoring inspection fee in an amount ~~established~~ required by the Secretary of ~~Housing and Urban Development.~~ HUD. This monitoring inspection fee shall be an amount paid by each manufactured home manufacturer in ~~the~~ this State for each manufactured home produced by the manufacturer in ~~that state,~~ this State.

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary of ~~Housing and Urban Development~~ HUD or ~~such the~~ the Secretary's agent, who shall ~~distribute the fees collected from all manufactured home manufacturers among the approved and conditionally-approved states based on the number of manufactured homes whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer, or purchaser in that state, and the extent of participation of the State in the joint monitoring team program established under the National Manufactured Housing Construction and Safety Standards Act of 1974.~~ agent.

"§ 143-151.3. Reports.

Each manufacturer, distributor, and dealer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Commissioner or the Secretary of ~~Housing and Urban Development~~ HUD may reasonably require to be able to determine whether ~~such the~~ the manufacturer, distributor, or dealer has acted or is acting in compliance with this Article, or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974 Act~~ and shall, upon request of a person ~~duly~~ designated by the Commissioner or the Secretary of ~~Housing and Urban Development,~~ HUD, permit ~~such the~~ the person to inspect appropriate books, papers, records and documents relevant to determining whether ~~such the~~ the manufacturer, distributor, or dealer has acted or is acting in

compliance with this Article or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974~~, Act, and any rules adopted by the Commissioner under this Article.

~~"§ 143-151.4. Notification of defects, defects and correction procedures.~~

Every manufacturer of manufactured homes shall ~~furnish~~ provide for notification of any defect and correction procedures in any manufactured home produced by ~~such the~~ manufacturer and ~~correct such defect~~ in accordance with the Act, this Article, and any ~~procedures specified~~ rules adopted by the Commissioner.

"§ 143-151.5. Prohibited acts.

(a) No person shall:

- (1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any manufactured home ~~which that~~ is manufactured on or after the effective date of any applicable manufactured home construction and safety standard under the Act or this Article and ~~which that~~ does not comply with ~~such the~~ standard, except as provided in ~~subsection (b);~~ subsections (b), (c), and (d) of this section.
- (2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under ~~the Act or this Article;~~ Article.
- (3) Fail to furnish notification of any defect as required by ~~G.S. 143-151.4;~~ the Act or this Article.
- (4) Fail to issue a ~~certificate of compliance,~~ label or issue a ~~certification to the effect that a manufactured home conforms to all applicable manufactured home construction and safety standards,~~ label if ~~such the~~ person in the exercise of due care has reason to know that ~~such certification~~ the label is false or misleading in a material ~~respect;~~ respect.
- (5) Fail to comply with a rule ~~adopted or an order~~ issued by the Commissioner under this ~~Article;~~ or Article.
- (6) Issue a certification pursuant to G.S. 143-148 if ~~such the~~ person in the exercise of due care has reason to know that ~~such the~~ certification is false or misleading in a material respect.

(b)(1) ~~Paragraph (1) of subsection (a) shall~~ Subdivision (a)(1) of this section does not apply to the sale, the offer for sale, or the introduction or delivery of any manufactured home after the first purchase of it in good faith for purposes other than resale.

(2) ~~Paragraph (1) of subsection (a) shall~~ Subdivision (a)(1) of this section does not apply to any person who establishes that he did not have reason to know in the exercise of due care that ~~such the~~ manufactured home was not in conformity with applicable manufactured home construction and safety ~~standards,~~ standards. or

(c) Subdivision (a)(1) of this section shall not apply to any person who, prior to such before the first purchase, holds a certificate of compliance issued by the manufacturer or importer of such the manufactured home to the effect that such mobile the manufactured home conforms to all applicable manufactured home construction and safety standards, unless such the person knows that such the manufactured home does not so conform.

"§§ 143-151.6, 143-151.7: Reserved for future codification purposes."

Section 3. Article 9D of Chapter 143 of the General Statutes is repealed.

Section 4. G.S. 58-2-55 reads as rewritten:

"§ 58-2-55. *Designated hearing officers.*

In any contested case under ~~Articles 1 through 64, 65 and 66, 67, 69, 70, or 71 of this Chapter, Chapter~~ or Article 9A or Article 9B of Chapter 143 of the General Statutes, the Commissioner may designate a member of his staff to serve as a hearing officer. When the Commissioner is unable or elects not to hear a contested case and elects not to designate a hearing officer to hear a contested case, he shall apply to the director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case."

Section 5. Structures built before the effective date of the Act shall not be affected by any changes made in this Article.

Section 6. G.S. 143-143.21A, as amended in Section 1 of this act, becomes effective January 1, 2000. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law upon approval of the Governor at 10:20 p.m. on the 4th day of August, 1999.

H.B. 274

SESSION LAW 1999-394

AN ACT TO AMEND THE LAW REGARDING CERTIFICATION AND EMPLOYMENT OF ASSISTANT PRINCIPALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-284(c), as amended by Section 1 of S.L. 1999-30, reads as rewritten:

"(c) The State Board of Education shall have entire control of certifying all applicants for supervisory and professional positions in all public elementary and high schools of North Carolina; and it shall prescribe the rules and regulations for the renewal and extension of all certificates, and shall determine and fix the salary for each grade and type of certificate which it authorizes. The State Board of Education shall require each applicant for an initial certificate or graduate

certificate, other than an applicant who is qualified under Article 19A of this Chapter, to demonstrate the applicant's academic and professional preparation by achieving a prescribed minimum score at least equivalent to that required by the Board on November 30, 1972, on a standard examination appropriate and adequate for that purpose. If the Board shall specify the National Teachers Examination for this purpose, the required minimum score shall not be lower than that which the Board required on November 30, 1972. The Board may not require an applicant who is qualified under Article 19A of this Chapter to take an additional exam to demonstrate academic competence. The Board shall not issue provisional certificates for principals.

The Board shall issue a one-year provisional assistant principal's certificate to an employee of a local board only if if: (i) the local board determines there is a shortage of persons who hold or are qualified to hold a principal's certificate, and (ii) certificate and the employee enrolls in an approved program leading to a masters degree in school administration before the provisional certificate expires. expires; or (ii) the employee is enrolled in an approved masters in school administration program and is participating in the required internship under the masters program. The Board shall extend the provisional certificate for a total of no more than two additional years while the employee is completing the program."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:00 p.m. on the 5th day of August, 1999.

H.B. 163

SESSION LAW 1999-395

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS STUDY COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND OTHER LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1999".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1999 Regular Session of the 1999

General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

- (1) Governmental Agency and Personnel Issues:
 - a. Defined contribution pension plan for State employees and teachers (H.B. 39 - Baker).
 - b. State agencies' customer service quality assurance (H.B. 636 - Owens).
 - c. Administrative process for State employee grievances (H.B. 1014 - Miller).
 - d. State employee comprehensive compensation system (H.J.R. 1158 - Nesbitt, Sherrill; S.J.R. 1031 - Reeves).
 - e. Procurement card pilot program of the Department of Administration, including its effectiveness and efficiency, costs and benefits, impact on accounting, budgeting, and purchasing history records, how to identify realized savings, and the feasibility of statewide implementation of the program (Shaw of Cumberland; Wainwright).
 - f. Acquisition of additional parklands at Lake James State Park (S.B. 200 - Odom).
 - g. State government construction projects' review and approval process.
 - h. Digitization of public records by the Division of State Archives (Jeffus).
 - i. Regulation of nondepository trust companies and authorization of family trust companies (S.B. 94 - Warren).
 - j. State tort liability and immunity (Walend, Nesbitt).
- (2) Insurance and Managed Care Issues:
 - a. Managed care issues, including any willing provider, patients' rights, managed care entity liability, office of consumer advocacy for insurance, prompt payment of health claims, and related issues (S.B. 1089 - Harris, H.J.R. 1461 - Mosley).
 - b. Mental health and chemical dependency parity (H.B. 713 - Alexander; S.B. 836 - Martin of Pitt).
 - c. Health reform recommendations of the Health Care Planning Commission and its advisory committees (established by Section 1.2 of Chapter 529 of the 1993 Session Laws) that have not been implemented but are still needed and other health reform issues (Insko).
 - d. Pharmacy choice/competition (H.B. 1277 - Cole; S.B. 137 - Rand).
- (3) Education Issues:
 - a. Driver education programs; teen drivers (H.B. 1440 - Mosley).
 - b. Seat belts on school buses (H.B. 355 - Mosley).

- c. Resolution of conflicts between boards of education and county commissioners.
 - d. School boards review of applicable court orders (H.B. 790 - Gulley).
 - e. Election, terms, and constitution of the Board of Governors of The University of North Carolina (H.B. 1242 - Haire).
- (4) Human Resources and Health Issues:
- a. Long-term care facility licensure compliance (H.J.R. 909 - Mosley).
 - b. Biannual inspection and grading of adult care homes by county social services departments, including areas and services to be inspected and graded, penalties for failure to meet minimal grade levels, fiscal impact on county social services departments, posting of grade in the adult care home, and related issues (Earle and Sherrill).
 - c. Medicaid recovery (H.J.R. 102 - Clary; S.J.R. 39 - Purcell).
 - d. Central registry for living wills and organ donations (H.B. 406 - Fox).
 - e. Animal vaccination administration (H.B. 595 - Owens; H.B. 329 - Tucker).
 - f. Marriage license laws (H.J.R. 1365 - Hill; H.B. 973 - Hill; S.B. 1018 - Dalton).
 - g. Unvented gas heaters (S.B. 785 - Albertson).
 - h. Hunger and nutrition (H.B. 1229 - Adams; S.B. 944 - Martin of Guilford).
 - i. Spaying/neutering of dogs and cats, including funding (H.B. 819 - Hensley; S.B. 330 - Kinnaird).
 - j. Causes and prevention of juvenile crime and delinquency (S.B. 914 - Rand).
 - k. Child care subsidy issues including but not limited to: state implementation of federally mandated biennial market-rate surveys for the child care subsidy program and provider reimbursement formula, under the new five-star rated license, for the child care subsidy program (Mosley).
 - l. Spinal manipulation treatment including comparison to spinal mobilization and similar treatments, utilization rates among health care professionals, complications and training.
 - m. Defibrillators; use and liability (H.B. 1118 - Wright).
 - n. Health professions scope of practice.
- (5) Taxation and Economic Development Issues:
- a. Consolidated income tax returns by affiliated corporations, including the legal, fiscal, and other effects of consolidated or combined reporting (H.J.R. 491 - McMahan).

- b. Impact of military bases on public services and taxes (Hurley and Warner).
 - c. Capital incentive program for tourism (H.J.R. 1483 - Earle).
- (6) Environmental/Agricultural Issues:
 - a. Wastewater system construction permits and related issues (H.B. 137 - Culp).
 - b. Red imported fire ants, including adverse impacts on health, environment, land use, and economy, and the feasibility of increasing control and eradication efforts (PLYLER, Warwick).
 - c. Apple industry, including marketing, production, effect of pesticide control, use of pesticides marketed in other countries, impact of imported apples and apple products, use of juice concentrate, and related issues (Justus).
 - d. Environmental impacts; sources of pollution (H.B. 1002 - Warwick).
 - e. Coastal beach movement; beach renourishment, and storm mitigation (H.B. 118 - Redwine; S.B. 54 - Ballantine).
- (7) Labor/Employment Issues:
 - a. Protection of youth labor in entertainment industry (H.B. 942 - Goodwin).
 - b. Employment security and unemployment insurance tax issues (H.B. 324 - C. Wilson; Hoyle, Kerr).
- (8) Government Regulatory Issues:
 - a. Magistrates authority (H.B. 1224 - Baddour).
 - b. Telephone solicitation (H.B. 1080 - Allen).
- (9) Transportation Issues:
 - a. Trucking safety (H.B. 1249 - C. Wilson).
 - b. Toll roads.
 - c. Municipal participation in road funding.
 - d. Pedestrian ferry services (Basnight).
- (10) Consumer protection issues:
 - a. Higher cost of credit including (Clodfelter):
 - 1. A review of the licensing and regulatory supervision of credit sources subject to statutory interest or fee limitations other than the usury act (G.S. 24) and retail installment sales act (G.S. 25);
 - 2. The adequacy of consumer protections afforded to borrowers of these lenders both in state and federal law;
 - 3. Whether legal differences in loan terms, regulation and consumer protections of similar credit products offered by federally chartered sources of credit and those lenders licensed by state agencies should be addressed in state law to create parity in the credit market;

4. Whether programs exist or should be initiated to educate the public to promote personal financial literacy;
 5. Whether marketplace competition, state regulations or law are sufficient to ensure the availability of lower-cost credit for high-risk borrowers who have improved their credit worthiness;
 6. Whether consumers who seek high-cost credit are subjected to abusive lending practices or suffer adverse economic consequences as a result of obtaining high-cost loans.
- b. Cash-out transactions used by some check-cashing businesses (S.B. 1137 - Martin of Guilford, Shaw of Guilford) and pawn shops.
 - c. Sale of structured settlements and the effects of Senate Bill 746.
 - d. Cash converter regulation (H.B. 1451 - Hurley).
 - e. Credit insurance and mortgage credit, including the licensing, regulation, and examination of mortgage brokers and mortgage lenders, financing of credit insurance premiums, and other aspects of the mortgage market relating to the availability of mortgage credit. These issues may be studied in conjunction with issues required to be studied under Senate Bill 1149 (1999 Session).
- (11) Criminal laws issues:
- a. Prohibiting death sentence for mentally retarded persons (S.B. 334 - Ballance).
 - b. Prohibiting death sentence obtained on basis of race (S.B. 991 - Ballance).
 - c. Bail bond laws (S.B. 994 - Odom, Ballantine; H.B. 1219 - BADDOUR).
- (12) Real property issues:
- a. Development-rights transfer and the creation of development-rights banks (S.B. 1059 - Clodfelter).
 - b. Ways to improve the quality of documents recorded in the office of the register of deeds (S.B. 873 - Dalton).

Section 2.2. Committee Membership. -- For each Legislative Research Commission committee created during the 1999-2001 biennium, the cochair of the Legislative Research Commission shall appoint the committee membership.

Section 2.3. Reporting Date. -- For each of the topics the Legislative Research Commission decides to study under this Part or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1999 General Assembly, 2000 Regular Session, or the 2001 General Assembly.

Section 2.4. Funding. -- From the funds available to the General Assembly, the Legislative Services Commission may allocate

additional monies to fund the work of the Legislative Research Commission.

PART III.-----NORTH CAROLINA TAX POLICY COMMISSION

Section 3.1. Commission Established. -- There is established a North Carolina Tax Policy Commission.

Section 3.2. Membership. -- The Commission shall consist of 15 members who shall represent, insofar as practicable, the diverse interests and geographic regions of the State and shall include individuals with expertise in tax policy, tax administration, and professional tax practice.

The Speaker of the House of Representatives shall appoint five members, as follows: two members of the General Assembly, one individual nominated by the North Carolina League of Municipalities, one individual who represents business taxpayers, and one public member.

The President Pro Tempore of the Senate shall appoint five members, as follows: two members of the General Assembly, one individual nominated by the North Carolina Association of County Commissioners, one individual who represents nonbusiness taxpayers, and one public member.

The Governor shall appoint five members, as follows: one individual who represents tax practitioners, one individual who represents nonprofit, charitable organizations, one individual who has demonstrated leadership and expertise in tax policy, one individual who represents senior citizens and one individual who represents small business taxpayers.

Appointments to the Commission shall be made no later than August 31, 1999. Vacancies shall be filled by the original appointing authority.

Section 3.3. Mission. -- The mission of the Commission is to study, examine, and, if necessary, design a realignment of the State and local tax structure in accordance with a clear, consistent tax policy. This mission requires:

- (1) Establishing the principles of taxation upon which a sound State and local tax structure should be built for the 21st century.
- (2) Examining the current State and local tax structure to determine if it reflects these principles.
- (3) Recommending changes in the State and local tax structure to the extent it does, and does not, reflect these benchmark tax principles.
- (4) Recommending principles and practices to simplify and consolidate existing taxes to provide uniformity; to ease the administrative burden on the taxpayer; to maximize taxpayers' use of electronic tax payment and reporting methods; and to reduce the costs of collecting and administering taxes.

Section 3.4. Duties. -- The Commission shall:

- (1) Evaluate the current State and local tax base in terms of:
 - a. Responsiveness of each base to the changing and emerging economies (e.g., from farming and manufacturing to services, commerce, such as Internet sales, and technology).
 - b. Rates compared to other states.
 - c. Cost of collecting each tax.
 - d. Tax burden imposed on individuals and businesses in the State.
 - e. Principles of taxation reflected in the tax.
- (2) Examine all current tax preferences, such as lower rates, exemptions, exclusions, and refunds, to determine their public policy purpose; examine the narrowing of the tax base that is a product of these preferences; and evaluate the resulting impact on taxpayers not eligible for these preferences.
- (3) Review tax changes made in the last 10 years to determine their impact on the State compared to their projected impact, and to assess any economic or demographic conditions on the horizon that may alter their impact.
- (4) Examine the impact of changing intergovernmental (federal-State-local) relationships upon funding among levels of government and the resulting impact upon tax policy; and examine how the State, counties, and cities will share a reduced federal funding role, when, in 2003, the Balanced Budget Act takes full effect and federal domestic spending is fully capped.
- (5) Examine the impact of changing interlocal, (city/county) service systems and the resulting effect on local tax policy; and examine how area-wide services, such as fire suppression, water-sewer, and recreation, should be financed and allocated.

Section 3.5. Report. -- The Commission shall submit a final report of its findings and recommendations by March 1, 2001, to the General Assembly, the Governor, and the citizens of the State. The Commission may also make an interim report, including recommended legislation, to the 2000 Regular Session of the 1999 General Assembly, and to the Governor and the citizens of the State. The report shall include draft legislation to implement its recommendations along with an analysis of the fiscal impact of each recommendation. The Commission shall terminate upon filing its final report.

Section 3.6. Expenses of Members. -- Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

Section 3.7. Cochairs; Meetings. -- Cochairs of the Commission shall be designated by the Speaker of the House of Representatives and the President Pro Tempore of the Senate from among their respective appointees. The Commission shall meet upon

the call of the chairs. A majority of the members of the Commission shall constitute a quorum.

The Commission may meet during a regular or special session of the General Assembly, subject to approval of the Speaker of the House of Representatives and the President Pro Tempore of the Senate. The Legislative Services Commission shall grant adequate meeting space to the Commission in the State Legislative Building or the Legislative Office Building.

Section 3.8. Subcommittees. -- The Commission may appoint subcommittees of its members and other knowledgeable persons or experts to assist it. It may also appoint a Technical Advisory Board, if deemed desirable by its members to have an ongoing body of technical experts.

Section 3.9. Citizen Participation. -- The Commission shall establish a process of citizen education and participation that assures the citizens of North Carolina of the opportunity to be informed of and contribute to the work of the Commission.

Section 3.10. Staff. -- Within funds available, the Commission, after consultation with the Legislative Services Commission, shall employ a full-time Executive Director who shall report to the Commission and serve at its pleasure. The Executive Director shall be the Chief Executive Officer and may employ additional employees and contract for services, subject to approval of the Commission. Additional staff may be provided to the Commission by the Legislative Services Office.

Section 3.11. Powers. -- The Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 through G.S. 120-19.4. The Commission may contract for consultant services as provided by G.S. 120-32.02, including revenue forecasting and estimating services from the Tax Research Division of the Department of Revenue.

Section 3.12. Cooperation by Government Agencies. -- The Commission may call upon any department, agency, institution, or officer of the State or any political subdivision of the State for facilities, data, or other assistance.

Section 3.13. Funding. -- The Legislative Services Commission shall allocate from the General Assembly reserves up to five hundred thousand dollars (\$500,000) for the expenses of the Commission. The Commission may apply for, receive, and accept grants of non-State funds, or other contributions as appropriate to assist in the performance of its duties.

PART IV.-----ELECTION LAWS STUDY COMMISSION (S.B. 882 - Gulley; H.B. 1402, H.B. 1073 - Alexander)

Section 4.1. There is created an Election Laws Revision Commission. The Commission shall be composed of 17 members. Twelve members shall be appointed as follows:

- (1) The President Pro Tempore of the Senate shall appoint four members, including at least one county board of elections

member, with no more than three of the four affiliated with the same political party.

- (2) The Speaker of the House of Representatives shall appoint four members, including at least one county elections director, with no more than three of the four affiliated with the same political party.
- (3) The Governor shall appoint four members, including at least one county commissioner and at least one minority-party member of the State Board of Elections.

The Chair and the Executive Secretary-Director of the State Board of Elections shall be ex officio members. The State chairs of the three political parties whose nominees for Governor received the largest number of votes in the most recent general election for Governor shall be ex officio members. All members of the Commission, whether appointed or ex officio, shall be voting members.

Section 4.2. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Commission from their appointees.

Section 4.3. The Election Laws Revision Commission shall study the following:

- (1) The election laws, policies, and procedures of the State.
- (2) The administration of those laws, policies, and procedures at the State and local levels and the responsibilities of those administering these laws.
- (3) The election laws, policies, and procedures of other States and jurisdictions.
- (4) Federal and State case rulings impinging on these laws, policies, and practices.
- (5) Public funding of election campaigns, including the advisability and proper design of a system to allow public funds to be used to support the campaigns of candidates for Governor, Lieutenant Governor, other Council of State officers, and the General Assembly who agree to abide by fund-raising and spending limits.
- (6) APA exemption for the State Board of Elections.
- (7) Preference voting and instant second primaries.

Section 4.4. The Commission shall prepare and recommend to the General Assembly a comprehensive revision of the election laws of North Carolina that will accomplish the following:

- (1) Remove inconsistencies, inaccuracies, ambiguities, and outdated provisions in the law.
- (2) Incorporate in the law any desirable uncodified procedures, practices, and rulings of a general nature that have been implemented by the State Board of Elections or its Executive Secretary-Director.
- (3) Conform the statutory law to State and federal case law and to any requirements of federal statutory law and regulation.
- (4) Ensure the efficient and effective administration of elections in this State.

- (5) Continue the impartial, professional administration of elections, which the citizens of the State expect and demand.
- (6) Recodify the election laws, as necessary, to produce a comprehensive, clearly understandable structure of current North Carolina election law, susceptible to orderly expansion as necessary.

Section 4.5. With the prior approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist in the work of the Election Laws Revision Commission and may provide for additional staffing by the State Board of Elections, Office of the Attorney General, and the Institute of Government. With prior approval of the State Board of Elections, the Election Laws Revision Commission may hold its meetings in the offices of the State Board. With the prior approval of the Legislative Services Commission, the Election Laws Revision Commission may hold its meetings in the State Legislative Building or the Legislative Office Building.

Section 4.6. The Commission shall submit a final written report of its findings and recommendations on or before the convening of the 2001 Session of the General Assembly and may submit a report to the 2000 Regular Session of the 1999 General Assembly. All reports shall be filed with the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Principal Clerks of the Senate and the House of Representatives, and the Legislative Librarian. Upon filing its final report, the Commission shall terminate.

Section 4.7. Members of the Commission shall be paid per diem, subsistence, and travel allowances as follows:

- (1) Commission members who are also members of the General Assembly, at the rate established in G.S. 120-3.1;
- (2) Commission members who are officials or employees of the State or local government agencies, at the rate established in G.S. 138-6;
- (3) All other Commission members, at the rate established in G.S. 138-5.

Section 4.8. All State departments and agencies, local boards of elections, and local governments and their subdivisions shall cooperate with the Commission and, upon request, shall furnish to the Commission and its staff any information in their possession or available to them.

Section 4.9. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Election Laws Revision Commission.

PART V.-----LEGISLATIVE STUDY COMMISSION ON MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES

Section 5.1. The Implementation Advisory Committee that was created by the Legislative Study Commission on Mental Health,

Developmental Disabilities, and Substance Abuse Services may continue its work with the Developmental Disabilities Section of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services, to update strategies of the Mental Health Study Commission's Developmental Disabilities Plan. The Implementation Advisory Committee may make its final report to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services on or before July 1, 2000, and upon making its final report shall terminate unless extended by the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services (H.J.R. 627 - Alexander).

Section 5.2. The Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services shall study whether and under what circumstances certain persons committed involuntarily to State psychiatric hospitals should be released under specific conditions. In conducting the study, the Commission shall consider the following:

- (1) The target population for whom conditional release may be appropriate and necessary to protect public safety and enhance patient stability.
- (2) The estimated number of persons who could qualify for conditional release.
- (3) Criteria for conditional release that are clearly and narrowly defined to ensure that conditional release will apply only to the target population and will not be susceptible to being applied in an overinclusive manner.
- (4) Costs of implementing conditional release, including the need for such additional resources at the area mental health authority level as medication, transportation, case management, and administrative start-up costs.
- (5) The role, duties, and responsibilities of area mental health authorities, 24-hour facilities, courts, and law enforcement agencies. These roles, duties, and responsibilities should be sufficiently and clearly defined to ensure both efficient coordination and communication among these entities and continuity of care for respondents on conditional release.
- (6) The qualifications necessary for personnel monitoring and supervising conditional release and providing treatment to respondents on conditional release.
- (7) The mental health system issues and patient disabilities that currently contribute to patient noncompliance with recommended treatment, and treatment approaches and systems designs that would enhance patient compliance, mental health, and quality of life.
- (8) Any other issues the Commission deems appropriate for the study (H.B. 298 - Hackney).

Section 5.3. The Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services

shall study the use of physical and mechanical restraints in certain facilities (S.B. 1086 - Phillips).

Section 5.4. The Commission shall report its findings and recommendations under this Part to the 1999 General Assembly, Regular Session 2000, not later than one week prior to its convening. The Commission's report may include recommended legislation for consideration by the 1999 General Assembly, Regular Session 2000.

PART VI.-----FUTURE OF ELECTRIC SERVICE FUNDING CONTINUATION (H.B. 777 - McComas; S.B. 266 - Hoyle)

Section 6.1. Section 10.1 of S.L. 1997-483 reads as rewritten:

"Section 10.1. Notwithstanding G.S. 62-302(d), all expenses during the ~~1997-98 and the 1998-99~~ 1997-98, 1998-99, and 1999-2000 fiscal years of the Study Commission on the Future of Electric Service in North Carolina, established in S.L. 1997-40, shall be reimbursed from funds in the Utilities Commission and Public Staff Fund. There is allocated initially one hundred thousand dollars (\$100,000) from the Utilities Commission and Public Staff Fund to the General Assembly for the purpose of enabling the Study Commission on the Future of Electric Service in North Carolina to organize and begin its work. Upon the certification of the need for additional funds by the cochairs of the Study Commission on the Future of Electric Service in North Carolina for the work of the Commission, the Utilities Commission shall transfer the additional funds from the Utilities Commission and Public Staff Fund to the General Assembly for that purpose."

Section 6.2. This Part is effective retroactively to June 30, 1999.

PART VII.-----STUDY COMMISSION ON AGING STUDIES

Section 7.1. The North Carolina Study Commission on Aging shall study the issue of annual immunization of residents and employees of nursing homes, adult care homes, and adult day care homes against influenza, and the immunization of residents every five years against pneumococcal disease. In conducting the study, the Commission shall consider the following:

- (1) Requiring that facilities obtain the written, informed consent to immunization by residents and employees.
- (2) Providing for exemptions from immunization on the basis of medical contraindication or religious belief.
- (3) The dates by which annual immunizations should be administered.
- (4) Methods for ensuring facility compliance with immunization requirements, including documentation of immunizations performed.
- (5) Fiscal impact of providing immunizations.
- (6) Any other matters the Commission deems relevant to the study (Insko).

Section 7.2. The North Carolina Study Commission on Aging shall study the rationale and appropriateness of present cost-sharing of nonfederal costs of Medicaid services for all State-County Special Assistance (S.B. 743 - Dalton).

Section 7.3. The Commission shall report its findings and recommendations under this Part, including recommended legislation, to the 1999 General Assembly, Regular Session 2000, not later than May 1, 2000.

PART VIII.-----JOINT LEGISLATIVE COMMISSION ON SEAFOOD AND AQUACULTURE/SEAFOOD LABELED AS TO ORIGIN (H.B. 953 - Smith)

Section 8.1. The Joint Legislative Commission on Seafood and Aquaculture shall study the desirability and feasibility of requiring seafood entering the State to be labeled as to its state or country of origin. The Joint Legislative Commission on Seafood and Aquaculture shall report its findings and recommendations, if any, to the 2000 Regular Session of the 1999 General Assembly.

PART IX.-----ENVIRONMENTAL REVIEW COMMISSION

Section 9.1. The Environmental Review Commission shall study motor vehicle emissions testing and maintenance requirements under Part III of Senate Bill 953 (1999 Regular Session) as they relate to individual counties and shall report its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly (Gibson).

PART X.-----JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE STUDIES

Section 10.1. The Joint Legislative Transportation Oversight Committee shall study:

- (1) The issuance by the Division of Motor Vehicles of motor vehicle titles without recorded liens noted on the title in circumstances in which a lien should have been recorded on the motor vehicle title. The Committee shall review the issuance of titles that are applied for at a Motor Vehicle License Plate Agency operated by the Division of Motor Vehicles as well as motor vehicle titles that are applied for at a Motor Vehicle License Plate Agency operated by a private contractor (Plyler).
- (2) Nonbetterment utility relocation costs (H.B. 789 - Goodwin).

Section 10.2. The Joint Legislative Transportation Committee may report any findings and recommendations of its studies under this Part to the General Assembly prior to the convening of the 2000 Regular Session of the 1999 General Assembly, or prior to the convening of the 2001 General Assembly.

PART XI.-----CIVIL LITIGATION STUDY COMMISSION

Section 11.1.(a) The Civil Litigation Study Commission is created. The Commission shall consist of 18 voting members: six members to be appointed by the President Pro Tempore of the Senate, six members to be appointed by the Speaker of the House of Representatives, and six members to be appointed by the Chief Justice of the North Carolina Supreme Court. No more than four members appointed by the President Pro Tempore of the Senate and no more than four members appointed by the Speaker of the House of Representatives may be members of the General Assembly. No more than four of the members appointed by any one of the three appointing authorities may be members of the same political party.

Section 11.1.(b) The Commission shall:

- (1) Study all practices and procedures that affect the speed, fairness, and accuracy with which civil actions are disposed of in the trial divisions of the General Court of Justice, including the rules of civil procedure, rules of evidence, other relevant statutes, statewide and local court-adopted rules of practice and procedure, administrative rules, appellate opinions and all other relevant practices, customs, and traditions in the trial courts of North Carolina;
- (2) Devise and recommend improved practices and procedures that (i) reduce the time required to dispose of civil actions in the trial divisions; (ii) simplify pretrial and trial procedure; (iii) guarantee the fairness and impartiality with which the claims and defenses are heard and resolved; and (iv) increase the parties' and the public's satisfaction with the process of civil litigation;
- (3) Raising the amount in controversy that determines the proper division for trial of civil actions and allowing counsel fees as part of costs in certain civil actions (S.B. 955 - Dalton);
- (4) Requiring insurers to provide information prior to litigation requiring policy provisions and policy limits upon written request and giving an insurer who provides such information the option of initiating mediation with the person who sought the information (S.B. 24 - Dalton);
- (5) Allowing prisoners who suffer death or total and permanent disability to receive compensation under the Workers' Compensation Act based on the minimum wage (S.B. 992 - Ballance);
- (6) Public duty doctrine issues (Ballance).

Section 11.1.(c) The Commission may report to the General Assembly and the Chief Justice by making an interim report no later than the convening of the 2000 Regular Session and shall make a final report not later than March 1, 2001. The report shall be in writing and shall set forth the Commission's findings, conclusions, and recommendations, including any proposed legislation or court rules. Upon issuing its final report, the Commission shall terminate.

Section 11.1.(d) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate one

of their appointees to serve as cochair. The Commission shall meet at such times and places as the cochairs designate. The facilities of the State Legislative Building and the Legislative Office Building shall be available to the Commission, subject to the approval of the Legislative Services Commission. Legislative members of the Commission shall be reimbursed for subsistence and travel expenses at the rates set forth in G.S. 120-3.1. Members of the Commission who are officers or employees of the State shall receive reimbursement for travel and subsistence expenses at the rates set forth in G.S. 138-6. All other members shall receive compensation and reimbursement for travel and subsistence expenses at the rates specified in G.S. 138-5.

Section 11.1.(e) The Commission may solicit, employ, or contract for technical assistance and clerical assistance, and may purchase or contract for the materials and services it needs. Subject to the approval of the Legislative Services Commission, the staff resources of the Legislative Services Commission shall be available to the Commission without cost except for travel, subsistence, supplies, and materials.

Section 11.2. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of this Part.

PART XII.-----JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE STUDY

Section 12.1. The Joint Legislative Education Oversight Committee may study the concept of prekindergarten education including the Bright Beginnings Program in Mecklenburg County (Rucho).

Section 12.2. The Joint Legislative Education Oversight Committee may report to the General Assembly its findings and recommendations of this study not later than the convening of the 1999 General Assembly, 2000 Regular Session, or that of the 2001 General Assembly.

PART XIII.-----REVENUE LAWS STUDY COMMITTEE

Section 13.1. The Revenue Laws Study Committee shall study the following issues:

- (1) Regulation and practice of investment advisers including the following (S.B. 1010 - Hoyle; Braswell):
 - a. Review and consider the current registration and notice filing procedures and fees required by State law and determine whether the law should be amended to require the disclosure of more information to potential clients of investment advisers to protect the consumers of the State;
 - b. Consider whether there should be established in the Office of the Secretary of State an arbitration program that would administer arbitration of disputes, claims, or controversies arising out of contractual relationships between investment advisers and clients or between

investment advisers and those who hold client accounts and clear security transactions. If the study determines that an arbitration program should be established, the proposal should include recommendations regarding the training of arbitrators, the composition of arbitration panels, a policy to make the program self-funding, and a schedule of fees for those who use arbitration services;

- c. Review the use of internet-based security transactions and how those transactions are regulated by the State and consider the establishment of a clearinghouse in the Office of the Secretary of State through which all internet-based security transactions would be monitored and recorded. If the study determines that a clearinghouse should be established, the proposal should include recommendations regarding the technology required to record those transactions effectively, while maintaining the security of corporate documents and records, and the cost of such technology; and
- d. Study any other relevant issues.

- (2) Any necessary changes to the Shareholder Protection Act and the Business Corporation Act.

Section 13.2. The Revenue Laws Study Commission may report any findings and recommendations of its studies under this Part to the General Assembly prior to the convening of the 2000 Regular Session of the 1999 General Assembly, or prior to the convening of the 2001 General Assembly.

Section 13.3. From appropriations to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Revenue Laws Study Committee under this Part.

PART XIV.-----JOB TRAINING STUDY COMMISSION

Section 14.1.(a) The General Assembly intends to reorganize the State's workforce development system to improve the delivery of job training programs and services in North Carolina.

Section 14.1.(b) There is created a Legislative Study Commission on Job Training Programs. The purpose of the Commission is to review State and federally funded job training programs and services currently in existence to determine the feasibility of eliminating or consolidating those which are duplicative, inefficient, or ineffective in carrying out their purposes and activities.

Section 14.1.(c) The Commission shall consist of six members appointed by the Speaker of the House of Representatives, at least three of whom shall be members of the House of Representatives, and six members appointed by the President Pro Tempore of the Senate, at least three of whom shall be members of the Senate. The Speaker shall designate one Representative as cochair and the President Pro Tempore shall designate one Senator as cochair. Vacancies on the Commission shall be filled by the same appointing

officer who made the initial appointment. The Commission shall expire upon delivering its final report.

The Commission, while in the discharge of official duties, may exercise all powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairs. The Commission may meet in the Legislative Building or the Legislative Office Building. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02.

The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, and the expenses relating to the clerical employees shall be borne by the Commission. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

Section 14.1.(d) The Commission shall have the following powers and duties:

- (1) To review State and federal laws, rules, and regulations pertaining to job training programs to determine the purpose of each program, the population served, and each program's annual outcomes in terms of type of training received, work search efforts, and job placement;
- (2) To ascertain as far as possible the intention of the United States Congress with respect to continued funding of federally mandated job training programs and any changes in funding formulae;
- (3) To review the amount of State and federal dollars appropriated for each job training program conducted in this State and to review federal requirements for continuous federal funding of the programs;
- (4) To review the number of different State agencies that administer State and federal job training programs, the number of persons employed to implement each job training program, and the amount of State dollars needed annually to implement the program;
- (5) To determine whether federally funded job training programs in this State may lawfully be abolished or reduced in size by the General Assembly, and the impact of such reduction or elimination;
- (6) To conduct public hearings to receive citizen, State agency, and local government comment and experience with the job training programs;
- (7) To conduct other studies or activities to aid the Commission in carrying out its purpose and duties, including reviewing reorganization and consolidation efforts in other states; and

- (8) To ensure program evaluation and accountability for all workforce development programs and to create a comprehensive statewide focus on workforce development.

Section 14.1.(e) The Legislative Study Commission on Job Training Programs may report to the General Assembly, the Joint Legislative Commission on Governmental Operations, and the Joint Legislative Education Oversight Committee not later than the convening of the 1999 General Assembly, 2000 Regular Session, or that of the 2001 General Assembly. The report shall identify each job training program operating in the State and recommend whether each program should be expanded, continued without change, abolished, consolidated with another program, or otherwise modified, including implementation components.

Section 14.1.(f) All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

Section 14.1.(g) Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds to implement the provisions of this Part.

PART XV.-----COMMISSION ON IMPROVING THE ACADEMIC ACHIEVEMENT OF MINORITY AND AT-RISK STUDENTS (S.B. 943 - Martin of Guilford; S.B. 762 - CARTER; H.B. 1116 - WRIGHT; H.B. 536 - MOORE)

Section 15.1.(a) The Commission on Improving the Academic Achievement of Minority and At-Risk Students is created. The Commission shall consist of 22 members as follows:

- (1) Five senators and three public members appointed by the President Pro Tempore of the Senate;
- (2) Five representatives and three public members appointed by the Speaker of the House of Representatives; and
- (3) Six public members appointed by the Governor, who represent groups or individuals with knowledge and experience in advocating, educating, or assisting minority and at-risk students to achieve, at least one of whom is a representative of a statewide nonprofit education advocacy organization that advocates on behalf of minority and at-risk students and at least one of whom is a representative of a statewide organization that represents the interests of African-Americans. In making appointments to the Commission, the appointing officers shall ensure that African-American members have significant representation on the Commission.

Section 15.1.(b) Initial appointments to the Commission shall be made before September 15, 1999. The first meeting of the Commission shall be held no later than October 15, 1999.

Section 15.2. The President Pro Tempore of the Senate shall designate one senator as cochair and the Speaker of the House of Representatives shall designate one representative as cochair.

Section 15.3. The Commission shall be authorized to:

- (1) Gather accurate and reliable data and research information pertaining to the status of minority and at-risk students in the North Carolina public education system;
- (2) Identify and visit education programs and other efforts within and outside North Carolina that appear to be successful in yielding significant positive results for minority and at-risk students;
- (3) Consult with higher education faculty members and other persons who have been engaged in extensive research and observation related to these issues and encourage their direct involvement in the activities of the Commission;
- (4) Conduct hearings throughout the State for the purpose of obtaining meaningful information regarding successful education programs and efforts related to those concerns;
- (5) Identify, consult, and meet with representatives of national, regional, and State-level organizations and agencies that could be particularly helpful in addressing these concerns;
- (6) Devise recommendations as to steps that should be taken to address these concerns -- steps to be taken separately and collectively by:
 - a. State government agencies;
 - b. Local government agencies;
 - c. Public schools and higher education institutions;
 - d. Nonprofit organizations, including community-based organizations, with a particular emphasis on those with direct ties to families of these children and youth;
 - e. Foundations;
 - f. Religious institutes;
 - g. Civic organizations;
 - h. Business and industry; and
 - i. Other entities.
- (7) Determine the extent and categories of fiscal and human resources needed to address the identified concerns.
- (8) High school graduation standards, including adequacy of course requirements and related issues.

Section 15.4. In the study, particular emphasis should be placed on programs and efforts that have been successful in imparting:

- (1) Improved educational achievement;
- (2) Reduction of school discipline and behavioral problems;
- (3) Reduction of minority and at-risk student dropout rates; and
- (4) Improved relations between parents, schools, and students.

Section 15.5. The Commission shall make an interim report of its findings and recommendations to the General Assembly not later than the convening of the 2000 Regular Session of the 1999 General Assembly. The Commission shall submit to the General Assembly a final report of its findings and recommendations of this study not later than the convening of the 2001 General Assembly. Upon filing its final report, the Commission shall terminate.

Section 15.6. The Commission, while in the discharge of official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet in the Legislative Building or the Legislative Office Building.

Section 15.7. Members of the Commission shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1.

Section 15.8. The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Administrative Officer shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services Commission. The expenses relating to the employees shall be borne by the Commission.

Section 15.9. When a vacancy occurs in the membership of the Commission, the vacancy shall be filled by the same appointing officer who made the initial appointment.

Section 15.10. All State departments and agencies and local governments and their subdivisions shall furnish the Commission with information in their possession or available to them.

Section 15.11. The Legislative Services Commission shall allocate funds available to the General Assembly to implement the provisions in this Part.

PART XVI.-----JOINT SELECT COMMITTEE ON INFORMATION TECHNOLOGY STUDY USE OF INDIVIDUAL'S PERSONAL INFORMATION CONTAINED IN STATE DATABASES.

Section 16.1. The Joint Select Committee on Information Technology shall study the extent to which an individual's personal information contained in all State databases, including the Division of Motor Vehicles, is accessible and used by nongovernmental entities and individuals, and the appropriateness of that accessibility and use.

Section 16.2. The Committee may report to the 2000 Session of the 1999 General Assembly and shall file a final report containing its findings and recommendations to the 2001 General Assembly not later than its convening.

PART XVII.-----DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES STUDIES

Section 17.1. The Department of Environment and Natural Resources shall study:

- (1) Issues related to evaluating and improving compliance with the Forest Practice Guidelines Related to Water Quality adopted by the Department of Environment and Natural Resources pursuant to G.S. 113A-52.1 (Kinnaid).
- (2) Current procedures concerning permits issued for open burning in or near woodlands under the protection of the Department of Environment and Natural Resources under

Article 4C of Chapter 113 of the General Statutes when the burning is to occur on five or more acres of land and shall determine whether more controls are needed in order to protect the public or the environment, or both (Thomas).

Section 17.2. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than March 1, 2000.

PART XVIII.-----NORTH CAROLINA GOVERNMENT COMPETITION ACT REPEALED

Section 18.1. Article 74 of Chapter 143 is repealed.

PART XIX.-----ERGONOMICS PROGRAM AND STUDY

Section 19.1.(a) No funds appropriated to the Department of Labor for the 1999-2000 fiscal year or for the 2000-2001 fiscal year shall be used, encumbered, or committed to implement or enforce an ergonomics standard.

Section 19.1.(b) The Legislative Study Commission on Occupational Musculoskeletal Disorders is created to study the causes, frequency, costs, and prevention of occupational musculoskeletal disorders including, but not limited to, sprains, strains, and repetitive motion disorders.

Section 19.1.(c) The Commission shall be comprised of 16 members. The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall appoint Cochairs of the Commission. Appointments to the Commission shall be made as follows:

- (1) The President Pro Tempore of the Senate shall appoint four members of the Senate and three members of the general public, one of whom shall be a representative of business or industry management, one of whom shall be a representative of labor, and one of whom shall be a member of the public-at-large.
- (2) The Speaker of the House of Representatives shall appoint four members of the House and three members of the general public, one of whom shall be a representative of business or industry management, one of whom shall be a representative of labor, and one of whom shall be a member of the public-at-large.
- (3) The Commissioner of Labor shall appoint two members from the general public.

Section 19.1.(d) By April 1, 2000, the Commission shall report to the Joint Legislative Commission on Governmental Operations and to the Senate and House Appropriations Subcommittees on Natural and Economic Resources its findings regarding the prevention of occupational musculoskeletal disorders, including recommendations regarding an ergonomics standard.

Section 19.1.(e) Nothing in this section shall prohibit the Commissioner from using funds appropriated to the Department of

Labor for the 1999-2000 fiscal year or for the 2000-2001 fiscal year to comply with federal law, participate in legislative study commissions, or continue voluntary ergonomics programs.

PART XX.-----STATE BOARD OF DENTAL EXAMINERS TO DEVELOP PROCEDURES FOR LICENSURE-BY-CREDENTIAL FOR OUT-OF-STATE DENTISTS AND DENTAL ASSISTANTS; REPORT TO GENERAL ASSEMBLY (S.B. 665 - SOLES; H.B. 506 - BRASWELL AND GARDNER)

Section 20.1. The State Board of Dental Examiners shall study, consider, and develop procedures for allowing North Carolina to license-by-credential out-of-state licensed dentist and dental hygienist licensure applicants; it shall develop recommendations for any changes needed in the Dental Practice Act; and it shall prepare to submit proposed rules to implement a sound program for the new licensing pathway.

The Board shall determine how the new procedures should be authorized and developed for the Board to allow less burdensome and more timely entry into the State for qualified out-of-state licensed applicants, while at the same time continuing the same degree of protection of the public as is the case under the current law and procedures.

The Board shall report the results of its work, including any recommended statutory changes, to the General Assembly by May 15, 2000.

PART XXI.-----JOINT SELECT COMMITTEE ON HIGHER EDUCATION FACILITIES NEEDS CREATION

Section 21.1.(a) The Joint Select Committee on Higher Education Facility Needs is created. The Committee shall consist of 20 members: 10 appointed by the President Pro Tempore of the Senate, and 10 appointed by the Speaker of the House of Representatives.

The President Pro Tempore of the Senate shall designate one appointee as cochair and the Speaker of the House of Representatives shall designate one appointee as cochair.

Section 21.1.(b) The Committee shall study the facility needs of The University of North Carolina and the North Carolina Community College System. In the course of study, the Committee shall consider:

- (1) The "University of North Carolina Capital Equity and Adequacy Study and 10-Year Capital Need", by Eva Klein and Associates;
- (2) The MGT of America report entitled "Funding Formula Study: Phase 3 and Phase 4 Reports-North Carolina Community College System";
- (3) Any other relevant reports or studies on higher education facility needs;
- (4) Alternative methods of funding identified facility needs;

- (5) Repair and maintenance needs of higher education facilities;
- (6) Construction systems to maximize efficiency in the construction of higher education facilities; and
- (7) State laws and policies governing the construction, repair, and renovation of higher education facilities.

Section 21.1.(c) The Committee may report its findings, and recommendations to the General Assembly upon the convening of the 2000 Regular Session or of the 2001 General Assembly. Upon filing its final report, the Committee shall terminate.

Section 21.1.(d) The Committee, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19, and G.S. 120-19.1 through G.S. 120-19.4. The Committee may meet at any time upon the joint call of the cochairs. The Committee may meet in the Legislative Building or the Legislative Office Building.

Section 21.1.(e) Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1.

Section 21.1.(f) The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist in the work of the Committee. The House of Representatives' and the Senate's Supervisor of Clerks shall assign clerical staff to the commission or committee, upon the direction of the Legislative Services Commission. The expenses relating to clerical employees shall be borne by the Committee.

Section 21.1.(g) When a vacancy occurs in the membership of the Committee the vacancy shall be filled by the same appointing officer who made the initial appointment.

Section 21.1.(h) All State departments and agencies and local governments and their subdivisions shall furnish the Committee with any information in their possession or available to them.

PART XXIA.-----HOME RULE

Section 21A.1. The Legislative Research Commission may study the issue of home rule powers for cities and counties. Home rule is the delegation of additional power to take additional actions without approval of the General Assembly by local act. The Commission shall study the home rule granted by the Constitution or statutes of other states to ensure granting needed flexibility within a framework of safeguards and oversight.

The Commission may report to the 2001 General Assembly on the study authorized by this section.

PART XXIB. CHILDREN WITH SPECIAL NEEDS STUDY; REPEAL OF COMMISSION (H.B. 1455 - Boyd-McIntyre; H.B. 1195 - Rogers)

Section 21B.1. Article 12 of Chapter 120 of the General Statutes (G.S. 120-58 through 120-65) is repealed.

Section 21B.2. There is established the Study Commission on Children With Special Needs. The Commission shall consist of 18 members, appointed as follows:

- (1) Seven persons appointed by the Speaker of the House of Representatives, four of whom shall be members of the House of Representatives, and three of whom shall be public members.
- (2) Seven persons appointed by the President Pro Tempore of the Senate, four of whom shall be members of the Senate, and three of whom shall be public members.
- (3) Four persons appointed by the Governor.

Each appointing authority shall assure insofar as possible that its appointees to the Commission reflect the composition of the North Carolina population with regard to ethnic, racial, age, and gender composition.

Section 21B.3. The Commission may:

- (1) Pursue an in-depth study of the services provided by other states for children with special needs.
- (2) Collect and evaluate for comprehensiveness existing legislation in North Carolina that is relevant to programs for children with special needs, and pertinent reports, studies and findings from other states and national bodies.
- (3) Collect and evaluate for comprehensiveness the reports and recommendations of the various agencies, councils, commissions, committees, and associations existing in North Carolina whose primary or partial duties are to make recommendations designed to affect services for children with special needs.
- (4) Evaluate the progress of the State in meeting the service requirements for children with special needs.

In addition, the Commission shall study issues related to meeting the educational needs of children with special needs, particularly the alternative funding methods and the effects of the current twelve and one-half percent (12.5%) cap on funding for the education of children with special needs.

Section 21B.4. The Commission may make an interim report to the 1999 General Assembly, Regular Session 2000, upon its convening, and shall make its final report to the 2001 General Assembly upon its convening, and to the Governor. Upon submitting its final report, the Commission shall expire.

Section 21B.5. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign appropriate professional staff from the Legislative Services Office of the General Assembly to assist with the study. The House of Representatives' and the Senate's Supervisors of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services Commission. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission.

Section 21B.6. The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each designate a cochair of the Commission. The Commission shall meet upon the call of the cochairs. A quorum of the Commission is 10 members. While in the discharge of its official duties, the Commission has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1. Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

Section 21B.7. From funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Study Commission on Children With Special Needs.

PART XXII.-----BILL AND RESOLUTIONS REFERENCES

Section 22.1. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

PART XXIII.-----EFFECTIVE DATE AND APPLICABILITY

Section 23.1. Except as otherwise specifically provided, this act becomes effective July 1, 1999. If a study is authorized both in this act and the Current Operations Appropriations Act of 1999, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1999 as ratified.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

Became law upon approval of the Governor at 9:03 p.m. on the 5th day of August, 1999.

S.B. 1025

SESSION LAW 1999-396

AN ACT TO REORGANIZE THE SUPERIOR COURT DIVISION BY EXPANDING THE NUMBER OF JUDICIAL DIVISIONS FROM FOUR TO EIGHT, TO AUTHORIZE PILOT PROGRAMS FOR THE ORGANIZATION AND MANAGEMENT OF THE TRIAL COURTS, AND TO DIRECT THE USE OF FUNDS APPROPRIATED FOR IMPLEMENTATION OF THOSE PILOT PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-41(a) reads as rewritten:

"§ 7A-41. *Superior court divisions and districts; judges.*

(a) The counties of the State are organized into eight judicial divisions and 62 superior court districts, and each superior court district has the counties, and the number of regular resident superior court judges set forth in the following table, and for districts of less than a whole county, as set out in subsection (b) of this section:

Judicial Division	Superior Court District	Counties	No. of Resident Judges
First	1	Camden, Chowan, Currituck, Dare, Gates, Pasquotank, Perquimans	2
<u>First</u>	2	Beaufort, Hyde, Martin, Tyrrell, Washington	1
<u>First</u>	3A	Pitt	2
<u>Second</u>	3B	Carteret, Craven, Pamlico	2
<u>Second</u>	4A	Duplin, Jones, Sampson	1
<u>Second</u>	4B	Onslow	1
<u>Second</u>	5	New Hanover, Pender	3
<u>First</u>	6A	Halifax	1
<u>First</u>	6B	Bertie, Hertford, Northampton	1
<u>First</u>	7A	Nash	1
<u>First</u>	7B	(part of Wilson, part of Edgecombe, see subsection (b))	1
<u>First</u>	7C	(part of Wilson, part of Edgecombe, see subsection (b))	1
<u>Second</u>	8A	Lenoir and Greene	1
<u>Second</u>	8B	Wayne	1
<u>Second Third</u>	9	Franklin, Granville, Vance, Warren	2
<u>Third</u>	9A	Person, Caswell	1
<u>Third</u>	10A	(part of Wake, see subsection (b))	2
<u>Third</u>	10B	(part of Wake, see subsection (b))	2
<u>Third</u>	10C	(part of Wake, see subsection (b))	1
<u>Third</u>	10D	(part of Wake, see subsection (b))	1
<u>Fourth</u>	11A	Harnett, Lee	1
<u>Fourth</u>	11B	Johnston	1
<u>Fourth</u>	12A	(part of Cumberland, see subsection (b))	1
<u>Fourth</u>	12B	(part of Cumberland,	1

		see subsection (b))	
<u>Fourth</u>	12C	(part of Cumberland,	2
		see subsection (b))	
<u>Fourth</u>	13	Bladen, Brunswick,	2
		Columbus	
<u>Third</u>	14A	(part of Durham,	1
		see subsection (b))	
<u>Third</u>	14B	(part of Durham,	3
		see subsection (b))	
<u>Third</u>	15A	Alamance	2
<u>Third</u>	15B	Orange, Chatham	1
<u>Fourth</u>	16A	Scotland, Hoke	1
<u>Fourth</u>	16B	Robeson	2
Third <u>Fifth</u>	17A	Rockingham	2
<u>Fifth</u>	17B	Stokes, Surry	2
<u>Fifth</u>	18A	(part of Guilford,	1
		see subsection (b))	
<u>Fifth</u>	18B	(part of Guilford,	1
		see subsection (b))	
<u>Fifth</u>	18C	(part of Guilford,	1
		see subsection (b))	
<u>Fifth</u>	18D	(part of Guilford,	1
		see subsection (b))	
<u>Fifth</u>	18E	(part of Guilford,	1
		see subsection (b))	
<u>Sixth</u>	19A	Cabarrus	1
<u>Fifth</u>	19B	Montgomery, Moore,	2
		Randolph	
<u>Sixth</u>	19C	Rowan	1
<u>Sixth</u>	20A	Anson,	1
		Richmond	
<u>Sixth</u>	20B	Stanly, Union	2
<u>Fifth</u>	21A	(part of Forsyth,	1
		see subsection (b))	
<u>Fifth</u>	21B	(part of Forsyth,	1
		see subsection (b))	
<u>Fifth</u>	21C	(part of Forsyth,	1
		see subsection (b))	
<u>Fifth</u>	21D	(part of Forsyth,	1
		see subsection (b))	
<u>Sixth</u>	22	Alexander, Davidson,	2
		Davie, Iredell	
<u>Fifth</u>	23	Alleghany, Ashe,	1
		Wilkes, Yadkin	
Fourth <u>Eighth</u>	24	Avery, Madison,	1
		Mitchell,	
		Watauga, Yancey	
<u>Seventh</u>	25A	Burke, Caldwell	2
<u>Seventh</u>	25B	Catawba	2

<u>Seventh</u>	26A	(part of Mecklenburg, see subsection (b))	2
<u>Seventh</u>	26B	(part of Mecklenburg, see subsection (b))	2
<u>Seventh</u>	26C	(part of Mecklenburg, see subsection (b))	2
<u>Seventh</u>	27A	Gaston	2
<u>Seventh</u>	27B	Cleveland, Lincoln	2
<u>Eighth</u>	28	Buncombe	2
<u>Eighth</u>	29	Henderson, McDowell, Polk, Rutherford, Transylvania	2
<u>Eighth</u>	30A	Cherokee, Clay, Graham, Macon, Swain	1
<u>Eighth</u>	30B	Haywood, Jackson	1."

Section 2.(a) The Chief Justice may choose up to two of the eight divisions established pursuant to G.S. 7A-41, as amended in Section 1 of this act, or portions of those divisions, without dividing district court districts, in which to establish pilot programs for the organization and management of the trial courts. A majority of the senior resident superior court judges and chief district court judges of a division or portion of a division selected for a pilot must consent in order for their area to be designated as a pilot program.

Section 2.(b) In conducting the pilot program or programs, the Chief Justice is requested to:

- (1) After consultation with the senior resident superior court judges and chief district court judges of the districts comprising each pilot region, designate one judge to serve as the coordinating judge for that pilot program;
- (2) Assign staff to assist each coordinating judge;
- (3) Establish and, in consultation with the affected judges, district attorneys, and clerks of court, appoint the members of an advisory judicial council for each pilot program;
- (4) Authorize the coordinating judge, with the consent of the clerks of superior court, the district attorneys, the senior resident superior court judges, and the chief district court judges, and after an opportunity for comment by members of the public and the practicing attorneys within the pilot area, to:
 - a. Establish a schedule for all sessions of trial court;
 - b. Assign judges to sessions of court;
 - c. Develop and implement a procedure for the calendaring of cases, both criminal and civil, with assistance from the trial court administrator;
 - d. Assign particular categories of cases to individual judges;
 - e. Notwithstanding any other provision of law, determine the circumstances under which judges may hear motions

- and other pretrial proceedings outside the county in which the case arose but within the same judicial district;
- f. Establish local rules for the management of the pilot program, subject to the approval of the Chief Justice; and
- g. Transfer funds within budget categories to the extent allowed by the General Assembly and the Director of the Budget.

Section 2.(c) The Chief Justice and the Administrative Office of the Courts shall report to the General Assembly by March 1, 2002, on the operation of this pilot program and its implications for improving the efficiency and consistency of the State court system and providing better flexibility for addressing future changes in caseload.

Section 3. The one hundred fifty thousand dollars (\$150,000) provided by S.L. 1999-237 for implementation of House Bill 1225 shall instead be used to implement the provisions of this act (the companion bill), and to provide equipment and consulting and other services necessary to operate the pilot programs authorized in this act. The Administrative Office of the Courts shall consult with the judge or judges designated as coordinating judges for each pilot before establishing any positions or expending any funds for equipment and support services. Each coordinating judge shall be the hiring authority for purposes of administering the positions created from funds appropriated to the reserve fund. The Administrative Office of the Courts shall include an accounting of the use of these funds in the report required by subsection (c) of Section 2 of this act.

Section 4. This act becomes effective January 1, 2000.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:09 p.m. on the 5th day of August, 1999.

S.B. 1099

SESSION LAW 1999-397

AN ACT TO AMEND THE LAWS GOVERNING ALTERNATIVE SCHOOLS AND ALTERNATIVE LEARNING PROGRAMS SO AS TO IMPROVE THE QUALITY OF EDUCATIONAL SERVICES PROVIDED TO STUDENTS WHO ARE AT RISK OF ACADEMIC FAILURE AND TO INCREASE THE EDUCATIONAL EXPECTATIONS FOR THESE STUDENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-105.27 reads as rewritten:

"§ 115C-105.27. *Development and approval of school improvement plans.*

In order to improve student performance, each school shall develop a school improvement plan that takes into consideration the annual performance goal for that school that is set by the State Board under G.S. 115C-105.35. The principal of each school, representatives of

the assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building, and parents of children enrolled in the school shall constitute a school improvement team to develop a school improvement plan to improve student performance. Unless the local board of education has adopted an election policy, parents shall be elected by parents of children enrolled in the school in an election conducted by the parent and teacher organization of the school or, if none exists, by the largest organization of parents formed for this purpose. Parents serving on school improvement teams shall reflect the racial and socioeconomic composition of the students enrolled in that school and shall not be members of the building-level staff. Parental involvement is a critical component of school success and positive student achievement; therefore, it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation. The strategies for improving student performance shall include a plan for the use of staff development funds that may be made available to the school by the local board of education to implement the school improvement plan and shall include a plan to address school safety and discipline concerns in accordance with the safe school plan developed under Article 8C of this Chapter. The strategies may include a decision to use State funds in accordance with G.S. 115C-105.25. The strategies for improving student performance shall include a plan that specifies the effective instructional practices and methods to be used to improve the academic performance of students identified as at risk of academic failure or at risk of dropping out of school. The strategies may also include requests for waivers of State laws, rules, or policies for that school. A request for a waiver shall meet the requirements of G.S. 115C-105.26.

Support among affected staff members is essential to successful implementation of a school improvement plan to address improved student performance at that school. The principal of the school shall present the proposed school improvement plan to all of the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school building for their review and vote. The vote shall be by secret ballot. The principal shall submit the school improvement plan to the local board of education only if the proposed school improvement plan has the approval of a majority of the staff who voted on the plan.

The local board of education shall accept or reject the school improvement plan. The local board shall not make any substantive changes in any school improvement plan that it accepts. If the local board rejects a school improvement plan, the local board shall state with specificity its reasons for rejecting the plan; the school improvement team may then prepare another plan, present it to the principals, assistant principals, instructional personnel, instructional support personnel, and teacher assistants assigned to the school

building for a vote, and submit it to the local board to accept or reject. If no school improvement plan is accepted for a school within 60 days after its initial submission to the local board, the school or the local board may ask to use the process to resolve disagreements recommended in the guidelines developed by the State Board under G.S. 115C-105.20(b)(5). If this request is made, both the school and local board shall participate in the process to resolve disagreements. If there is no request to use that process, then the local board may develop a school improvement plan for the school. The General Assembly urges the local board to utilize the school's proposed school improvement plan to the maximum extent possible when developing such a plan.

A school improvement plan shall remain in effect for no more than three years; however, the school improvement team may amend the plan as often as is necessary or appropriate. If, at any time, any part of a school improvement plan becomes unlawful or the local board finds that a school improvement plan is impeding student performance at a school, the local board may vacate the relevant portion of the plan and may direct the school to revise that portion. The procedures set out in this subsection shall apply to amendments and revisions to school improvement plans."

Section 2. Article 8C of Chapter 115C of the General Statutes reads as rewritten:

"ARTICLE 8C.

"Local Plans for Alternative Schools/Alternative Learning Programs and Maintaining Safe and Orderly Schools.

"§ 115C-105.45. *Legislative findings.*

The General Assembly finds that all schools should be safe, secure, and orderly. If students are to aim for academic excellence, it is imperative that there is a climate of respect in every school and that every school is free of disruption, drugs, violence, and weapons. All schools must have plans, policies, and procedures for dealing with disorderly and disruptive behavior.

All schools and school units must have effective measures for assisting students who are at risk of academic failure or of engaging in disruptive and disorderly behavior.

"§ 115C-105.46. *State Board of Education responsibilities.*

In order to implement this Article, the State Board of Education:

- (1) Shall adopt guidelines for developing local plans under ~~G.S. 115C-105.47;~~ G.S. 115C-105.47.
- (2) Shall provide, in cooperation with the Board of Governors of The University of North Carolina, ongoing technical assistance to the local school administrative units in the development, implementation, and evaluation of their local plans under ~~G.S. 115C-105.57;~~ G.S. 115C-105.57.
- (3) May require a local board of education to withhold the salary of any administrator or other employee of a local school administrative unit who delays or refuses to prepare

and implement local safe school plans in accordance with ~~G.S. 115C-105.47;~~ and G.S. 115C-105.47.

- (4) May revoke the certificate of the superintendent, pursuant to G.S. 115C-274(c), for failure to fulfill the superintendent's duties under a local safe school plan.

- (5) Shall adopt policies that define who is an at-risk student.

"§ 115C-105.47. Local safe school plans.

(a) Each local board of education shall develop a local school administrative unit safe school plan designed to provide that every school in the local school administrative unit is safe, secure, and orderly, that there is a climate of respect in every school, and that appropriate personal conduct is a priority for all students and all public school personnel. The board shall include parents, the school community, representatives of the community, and others in the development or review of this plan. The plan may be developed by or in conjunction with other committees.

- (b) Each plan shall include each of the following components:

- (1) Clear statements of the standard of behavior expected of students at different grade levels and of school personnel and clear statements of the consequences that will result from one or more violations of those standards. There shall be a statement of consequences for students under the age of 13 who physically assault and seriously injure a teacher or other individual on school property or at a school-sponsored or school-related activity. The consequences may include placement in an alternative setting.
- (2) A clear statement of the responsibility of the superintendent for coordinating the adoption and the implementation of the plan, evaluating principals' performance regarding school safety, monitoring and evaluating the implementation of safety plans at the school level, and coordinating with local law enforcement and court officials appropriate aspects of implementation of the plan. The statement of responsibility shall provide appropriate disciplinary consequences that may occur if the superintendent fails to carry out these responsibilities. These consequences may include a reprimand in the superintendent's personnel file or withholding of the superintendent's salary, or both.
- (3) A clear statement of the responsibility of the school principal for restoring, if necessary, and maintaining a safe, secure, and orderly school environment and of the consequences that may occur if the principal fails to meet that responsibility. The principal's duties shall include exhibiting appropriate leadership for school personnel and students, providing for alternative placements for students who are seriously disruptive, reporting all criminal acts under G.S. 115C-288(g), and providing appropriate

- disciplinary consequences for disruptive students. The consequences to the principal that may occur shall include a reprimand in the principal's personnel file and disciplinary proceedings under G.S. 115C-325.
- (4) Clear statements of the roles of other administrators, teachers, and other school personnel in restoring, if necessary, and maintaining a safe, secure, and orderly school environment.
 - (5) Procedures for identifying and serving the needs of students who are at risk of academic failure or of engaging in disruptive or disorderly behavior.
 - (6) Mechanisms for assessing the needs of disruptive and disorderly ~~students~~, students and students who are at risk of academic failure, and providing them with services to assist them in achieving academically and in modifying their behavior, and removing them from the classroom when necessary.
 - (7) Measurable objectives for improving school safety and order.
 - (8) Measures of the effectiveness of efforts to assist students at risk of academic failure or of engaging in disorderly or disruptive behavior. The measures shall include an analysis of the effectiveness of procedures adopted under G.S. 115C-105.48 for students referred to alternative schools and alternative learning programs.
 - (9) Professional development clearly matched to the goals and objectives of the plan.
 - (10) A plan to work effectively with local law enforcement officials and court officials to ensure that schools are safe and laws are enforced.
 - (11) A plan to provide access to information to the school community, parents, and representatives of the local community on the ongoing implementation of the local plan, monitoring of the local plan, and the integration of educational and other services for students into the total school program.
 - (12) The name and role description of the person responsible for implementation of the plan.
 - (13) Direction to school improvement teams within the local school administrative unit to consider the special conditions at their schools and to incorporate into their school improvement plans the appropriate components of the local plan ~~for~~ for:
 - a. maintaining safe and orderly ~~schools~~, schools; and
 - b. addressing the needs of students who are at risk of academic failure or who are disruptive or both.
 - (13a) A clear statement of the services that will be provided to students who are assigned to an alternative school or an alternative learning program.

- (14) A clear and detailed statement of the planned use of federal, State, and local funds allocated for at-risk students, students and alternative schools, or both, schools and alternative learning programs.
- (15) Any other information the local board considers necessary or appropriate to implement this Article.

A local board may develop its plan under this section by conducting a comprehensive review of its existing policies, plans, statements, and procedures to determine whether they: (i) are effective; (ii) have been updated to address recent changes in the law; (iii) meet the current needs of each school in the local school administrative unit; and (iv) address the components required to be included in the local plan. The board then may consolidate and supplement any previously developed policies, plans, statements, and procedures that the board determines are effective and updated, meet the current needs of each school, and meet the requirements of this subsection.

Once developed, the board shall submit the local plan to the State Board of Education and shall ensure the plan is available and accessible to parents and the school community. The board shall provide annually to the State Board information that demonstrates how the At-Risk Student Services/Alternative Schools Funding allotment has been used to (i) prevent academic failure ~~or~~ and (ii) promote school safety.

(c) A local board may amend the plan as often as it considers necessary or appropriate.

"§ 115C-105.48. Placement of students in alternative schools/alternative learning programs.

(a) Prior to referring a student to an alternative school or an alternative learning program, the referring school shall:

- (1) Document the procedures that were used to identify the student as being at risk of academic failure or as being disruptive or disorderly.
- (2) Provide the reasons for referring the student to an alternative school or an alternative learning program.
- (3) Provide to the alternative school or alternative learning program all relevant student records, including anecdotal information.

(b) When a student is placed in an alternative school or an alternative learning program, the appropriate staff of the alternative school or alternative learning program shall meet to review the records forwarded by the referring school and to determine what support services and intervention strategies are recommended for the student. The parents shall be encouraged to provide input regarding the students' needs."

Section 3. G.S. 115C-12(24), as amended by Section 8.25(d) of S.L. 1999-237, reads as rewritten:

"§ 115C-12. Powers and duties of the Board generally.

The general supervision and administration of the free public school system shall be vested in the State Board of Education. The State

Board of Education shall establish policy for the system of free public schools, subject to laws enacted by the General Assembly. The powers and duties of the State Board of Education are defined as follows:

- ...
 (24) Duty to Develop Policies and Guidelines for Alternative Learning Programs, Provide Technical Assistance on Implementation of Programs, and Evaluate Programs. -- The State Board of Education shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services that are recommended to be provided in alternative learning programs and (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision. The State Board also shall adopt policies that define what constitutes an alternative school and an alternative learning program.

The State Board of Education shall also adopt guidelines to require that local school administrative units shall use (i) the teachers allocated for students assigned to alternative learning programs pursuant to the regular teacher allotment and (ii) the teachers allocated for students assigned to alternative learning programs only to serve the needs of these students.

The State Board of Education shall provide technical support to local school administrative units to assist them in developing and implementing plans for alternative learning programs.

The State Board shall evaluate the effectiveness of alternative learning programs and, in its discretion, of any other programs funded from the Alternative Schools/At-Risk Student allotment. Local school administrative units shall report to the State Board of Education on how funds in the Alternative Schools/At-Risk Student allotment are spent and shall otherwise cooperate with the State Board of Education in evaluating the alternative learning programs. As part of its evaluation of the effectiveness of these programs, the State Board shall, through the application of the accountability system developed under G.S. 115C-105.35, measure the educational performance and growth of students placed in alternative schools and alternative programs. If appropriate, the Board may modify this system to adapt to the specific characteristics of these schools."

Section 4. G.S. 115C-47(32a) is amended by adding the following at the end:

"Local boards shall assess on a regular basis whether the unit's alternative schools and alternative learning programs incorporate best practices for improving student academic performance and reducing

disruptive behavior, are staffed with professional public school employees who are well trained and provided with appropriate staff development, are organized to provide coordinated services, and provide students with high quality and rigorous academic instruction."

Section 5.(a) During the 1999-2000 school year, school improvement teams shall review and revise their school improvement plans to incorporate the provisions of Section 1 of this act.

Section 5.(b) Local boards of education shall review and revise their existing safe school plans to incorporate the provisions of Section 2 of this act. Local boards shall submit their revised plans to the State Board of Education by July 1, 2000. The State Board shall review the plans and may make recommendations regarding their implementation. Local boards of education are encouraged to consider these recommendations prior to implementing their revised safe school plans.

Section 6. G.S. 115C-105.48, as created in Section 2 of this act, becomes effective January 1, 2000. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:14 p.m. on the 5th day of August, 1999.

H.B. 478

SESSION LAW 1999-398

AN ACT TO CREATE THE CRIMINAL OFFENSE OF
THREATENING JUDGES, DISTRICT ATTORNEYS, AND
OTHER COURT OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. Article 5A of Chapter 14 of the General Statutes reads as rewritten:

"ARTICLE 5A.

"Endangering ~~Executive and Legislative~~ Executive, Legislative,
and Court Officers.

"§ 14-16.6. Assault on ~~executive or legislative~~ executive, legislative, or
court officer.

(a) Any person who assaults any legislative officer ~~named in G.S. 147-2(1), (2), or (3) or any officer, executive officer named in G.S. 147-3(c), officer, or court officer,~~ or any person who makes a violent attack upon the residence, office, temporary accommodation or means of transport of any legislative officer ~~named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(c)~~ one of those officers in a manner likely to endanger such legislative officer or executive the officer, shall be guilty of a felony and shall be punished as a Class I felon.

(b) Any person who commits an offense under subsection (a) and uses a deadly weapon in the commission of that offense shall be punished as a Class F felon.

(c) Any person who commits an offense under subsection (a) and inflicts serious bodily injury to any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any officer,~~ executive officer ~~as named in G.S. 147-3(c)~~ officer, or court officer, shall be punished as a Class F felon.

"§ 14-16.7. ~~Threats against executive or legislative executive,~~ legislative, or court officers.

(a) Any person who knowingly and willfully makes any threat to inflict serious bodily injury upon or to kill any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any officer,~~ executive official officer, ~~as named in G.S. 147-3(c),~~ or court officer, shall be guilty of a felony and shall be punished as a Class I felon.

(b) Any person who knowingly and willfully deposits for conveyance in the mail any letter, writing, or other document containing a threat to inflict serious bodily injury upon or to kill any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any officer,~~ executive official officer, ~~named in G.S. 147-3(c),~~ or court officer, shall be guilty of a felony and shall be punished as a Class I felon.

"§ 14-16.8. ~~No requirement of receipt of the threat.~~

In prosecutions under G.S. 14-16.7 of this Article it shall not be necessary to prove that any legislative ~~officer named in G.S. 147-2(1), (2), or (3) or any officer,~~ executive official ~~as named in G.S. 147-3(c)~~ officer, or court officer actually received the threatening communication or actually believed the threat.

"§ 14-16.9. ~~Officers-elect to be covered.~~

Any person who has been elected to any office covered by this Article but has not yet taken the oath of office shall be considered to hold the office for the purpose of this Article and G.S. 114-1.

"§ 14-16.10. Definitions.

The following definitions apply in this Article:

- (1) Court officer. -- Magistrate, clerk of superior court, acting clerk, assistant or deputy clerk, judge, or justice of the General Court of Justice; district attorney, assistant district attorney, or any other attorney designated by the district attorney to act for the State or on behalf of the district attorney; public defender or assistant defender; court reporter; court counselor as defined in G.S. 7B-1501(5).
- (2) Executive officer. -- A person named in G.S. 147-3(c).
- (3) Legislative officer. -- A person named in G.S. 147-2(1), (2), or (3)."

Section 2. G.S. 114-15(a) reads as rewritten:

"(a) The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is authorized to make under the laws of the State. The Bureau is authorized further,

at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property or any assault upon or threats against any legislative officer named in G.S. 147-2(1), (2), or ~~(3)~~ (3), any executive officer named in G.S. ~~147-3(e)~~, 147-3(c), or any court officer as defined in G.S. 14-16.10(1). The Bureau also is authorized at the request of the Governor to conduct a background investigation on a person that the Governor plans to nominate for a position that must be confirmed by the General Assembly, the Senate, or the House of Representatives. The background investigation of the proposed nominee shall be limited to an investigation of the person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985). The Governor must give the person being investigated written notice that he intends to request a background investigation at least 10 days prior to the date that he requests the State Bureau of Investigation to conduct the background investigation. The written notice shall be sent by regular mail, and there is created a rebuttable presumption that the person received the notice if the Governor has a copy of the notice."

Section 3. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:17 p.m. on the 5th day of August, 1999.

H.B. 685

SESSION LAW 1999-399

AN ACT TO PROVIDE THAT A LAW ENFORCEMENT OFFICER
MAY ARREST A PERSON ON PRIVATE PREMISES OR IN A

VEHICLE IN ACCORDANCE WITH STATE LAW WITH A COPY OF THE ORIGINAL ARREST WARRANT OR ORDER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-401(e) reads as rewritten:

"(e) Entry on Private Premises or Vehicle; Use of Force. --

(1) A law-enforcement officer may enter private premises or a vehicle to effect an arrest when:

- a. The officer has in his possession a warrant or order or a copy of the warrant or order for the arrest of a ~~person~~ person, provided that an officer may utilize a copy of a warrant or order only if the original warrant or order is in the possession of a member of a law enforcement agency located in the county where the officer is employed and the officer verifies with the agency that the warrant is current and valid; or the officer is authorized to arrest a person without a warrant or order having been issued,
- b. The officer has reasonable cause to believe the person to be arrested is present, and
- c. The officer has given, or made reasonable effort to give, notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe that the giving of such notice would present a clear danger to human life.

(2) The law-enforcement officer may use force to enter the premises or vehicle if he reasonably believes that admittance is being denied or unreasonably delayed, or if he is authorized under subsection (e)(1)c to enter without giving notice of his authority and purpose."

Section 2. This act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:21 p.m. on the 5th day of August, 1999.

S.B. 968

SESSION LAW 1999-400

AN ACT TO AMEND THE LAW REGARDING THE WAIVER OF COMPETITIVE BIDDING AND TO REQUIRE BID PROTESTS INVOLVING CONTRACTS OVER A CERTAIN AMOUNT TO BE HANDLED BY THE DEPARTMENT OF ADMINISTRATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-53(a)(1) reads as rewritten:

"(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review.

The Division of Purchase and Contract shall review and decide a protest on a contract valued at twenty-five thousand dollars (\$25,000) or more. The Secretary shall adopt rules or criteria governing the review of and decision on a protest on a contract of less than twenty-five thousand dollars (\$25,000) by the agency that awarded the contract."

Section 2. G.S. 143-53(a)(5) reads as rewritten:

"(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding. Notwithstanding the provisions of subsections (a) and (b) of this section, any waiver of competition for the purchase, rental, or lease of equipment, materials, supplies, or services is subject to prior review by the Secretary, if the expenditure exceeds ten thousand dollars (\$10,000). The Division may levy a fee, not to exceed one dollar (\$1.00), for review of each waiver application."

Section 3. G.S. 143-57 reads as rewritten:

"§ 143-57. Purchases of articles in certain emergencies.

In case of any emergency or pressing need arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Secretary of Administration shall have power to obtain or authorize obtaining in the open market any necessary supplies, materials, equipment, printing or services for immediate delivery to any department, institution or agency of the State government. A report on the circumstances of such emergency or need and the transactions thereunder shall be made a matter of record promptly thereafter. If the expenditure exceeds ten thousand dollars (\$10,000), the report shall also be made promptly thereafter to the Division of Purchase and Contract."

Section 3.1. This act does not apply to an agency, board, department, institution, or commission that is exempt from Article 3 of Chapter 143 of the General Statutes or from the provisions of that Article that require certain contracts to be awarded by the Department of Administration.

Section 4. This act becomes effective September 1, 1999. Section 1 applies to bid protests filed on or after that date. Sections 2 and 3 of this act apply to contracts awarded on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:25 p.m. on the 5th day of August, 1999.

S.B. 348

SESSION LAW 1999-401

AN ACT TO PROHIBIT THE MISUSE OF LASER DEVICES.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-34.8. Criminal use of laser device.

(a) For purposes of this section, the term 'laser' means light amplification by stimulated emission of radiation.

(b) It is unlawful intentionally to point a laser device at a law enforcement officer, or at the head or face of another person, while the device is emitting a laser beam.

(c) A violation of this section is an infraction.

(d) This section does not apply to a law enforcement officer who uses a laser device in discharging or attempting to discharge the officer's official duties. This section does not apply to a health care professional who uses a laser device in providing services within the scope of practice of that professional nor to any other person who is licensed or authorized by law to use a laser device or uses it in the performance of the person's official duties.

(e) This section does not apply to laser tag, paintball guns, and other similar games and devices using light emitting diode (LED) technology."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:29 p.m. on the 5th day of August, 1999.

S.B. 547

SESSION LAW 1999-402

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A TELECOMMUNICATIONS RELAY SERVICE TO ASSIST DEAF AND HEARING IMPAIRED PERSONS, INCLUDING THOSE WHO ALSO HAVE VISION IMPAIRMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-157 reads as rewritten:

"§ 62-157. ~~Dual party relay system.~~ Telecommunications relay service.

(a) Finding. -- The General Assembly finds and declares that it is in the public interest to provide access to public telecommunications services for hearing impaired or speech impaired persons persons, including those who also have vision impairment, and that a statewide ~~dual party telephone relay system~~ telecommunications relay service for telephone service should be established.

(a1) Definitions. -- For purposes of this section:

(1) "Exchange access facility" means the access from a particular telephone subscriber's premises to the telephone system of a local exchange telephone company, and includes local exchange company-provided access lines, private branch exchange trunks, and centrex network access

registers, all as defined by tariffs of telephone companies as approved by the Commission.

- (2) "Local service provider" means a local exchange company, competing local provider, or telephone membership corporation.

(b) Authority to Require Surcharge. -- ~~The Commission shall require local exchange companies and telephone membership corporations~~ local service providers to impose a monthly surcharge on all residential and business local exchange access facilities to fund a statewide ~~dual party telephone relay system~~ telecommunications relay service by which hearing impaired or speech impaired ~~persons~~ persons, including those who also have vision impairment, may communicate with others by telephone. ~~For the purpose of this section, exchange access facility means the access from a particular telephone subscriber's premises to the telephone system of a local exchange telephone company. Exchange access facilities include local exchange company provided access lines, private branch exchange trunks, and centrex network access registers, all as defined by tariffs of telephone companies as approved by the Commission.~~ This surcharge, however, may not be imposed on participants in the Subscriber Line Charge Waiver Program or the Link-up Carolina Program established by the Commission. This surcharge, and long distance revenues collected under subsection (f) of this section, are not includable in gross receipts subject to the franchise tax levied under G.S. 105-120 or the sales tax levied under G.S. 105-164.4.

(c) Initiating Petition. Specification of Surcharge. -- ~~Not later than February 1, 1990, the~~ The Department of Health and Human Services shall initiate a ~~dual party relay system~~ telecommunications relay service by filing a petition with the Commission requesting the ~~system~~ service and detailing initial projected required funding. The Commission shall, after giving notice and an opportunity to be heard to other interested parties, set the initial monthly surcharge based upon the amount of funding necessary to implement and operate the ~~system, service,~~ including a reasonable margin for a reserve. The surcharge shall be identified on customer bills as a special surcharge for provision of a ~~dual party relay system, telecommunications relay service for hearing impaired and speech impaired persons.~~ The Commission may, upon petition of any interested party, and after giving notice and an opportunity to be heard to other interested parties, revise the surcharge from time to time if the funding requirements change. In no event shall the surcharge exceed twenty-five cents (25¢) per ~~month, month~~ for each exchange access facility.

(d) Funds to Be Deposited in Special Account. -- ~~The local exchange companies and telephone membership corporations~~ service providers shall collect the surcharge from their customers and deposit the moneys collected with the State Treasurer, who shall maintain the funds in an interest-bearing, nonreverting account. After consulting with the State Treasurer, the Commission shall direct how and when the local ~~exchange companies and telephone membership corporations~~

service providers shall deposit these moneys. The funds deposited in this account may not be used to lease or purchase telecommunications devices for hearing impaired or speech impaired persons, except those devices used by the operator of the relay system established under this section. Revenues from this fund shall be available only to the Department of Health and Human Services to administer the statewide dual party telephone relay system, telecommunications relay service program, including its establishment, operation, and promotion. The Commission may allow the Department of Health and Human Services to use up to four cents (4¢) per access line per month of the surcharge for the purpose of providing telecommunications devices for hearing impaired or speech impaired persons, including those who also have vision impairment, through a distribution program. The Commission shall prepare such guidelines for the distribution program as it deems appropriate and in the public interest. Both the Commission and the Public Staff may audit all aspects of the telecommunications relay service program, including the distribution programs, as it does with any public utility subject to the provisions of this Chapter. Equipment paid for with surcharge revenues, as allowed by the Commission, may be distributed only by the Department of Health and Human Services.

(e) Administration of Service. -- The Department of Health and Human Services shall administer the statewide dual party telephone relay system, telecommunications relay service program, including its establishment, operation, and promotion. The Department may contract out the provision of this service for four-year periods to one or more service providers, using the provisions of G.S. 143-129.

(f) Charge to Users. -- The users of the relay system telecommunications relay service shall be charged their approved long distance and local rates for telephone services (including the surcharge required by this section), but no additional charges may be imposed for the use of the relay system service. The local exchange companies and telephone membership corporations service providers shall collect revenues from the users of the relay system service for long distance services provided through the relay system service. These revenues shall be deposited in the special fund established in subsection (d) of this section in a manner determined by the Commission after consulting with the State Treasurer. Local exchange companies and telephone membership corporations service providers shall be compensated for collection, inquiry, and other administrative services provided by said companies, subject to the approval of the Commission.

(g) Reporting Requirement. -- The Commission shall, after consulting with the Department of Health and Human Services, develop a format and filing schedule for a comprehensive financial and operational report on the dual party relay system, telecommunications relay service program. The Department of Health and Human Services shall thereafter prepare and file these reports as required by the Commission with the Commission and Joint Legislative Utility Review

Committee, the Public Staff. The Department shall also be required to report to the Revenue Laws Study Committee.

(h) Power to Regulate. -- The Commission shall have the same power to regulate the operation of the ~~dual party relay system telecommunications relay service program~~ as it has to regulate any public utility subject to the provisions of this Chapter."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:34 p.m. on the 5th day of August, 1999.

S.B. 285

SESSION LAW 1999-403

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE UNIVERSITY HEALTH SYSTEMS OF EASTERN CAROLINA SPECIAL REGISTRATION PLATES AND TO MODIFY THE SPECIAL REGISTRATION PLATES ISSUED TO MEMBERS OF THE JUDICIARY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. -- The Division shall issue the following types of special registration plates:

(48a) University Health Systems of Eastern Carolina. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the University Health Systems of Eastern Carolina.

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

<u>Special Plate</u>	<u>Additional Fee Amount</u>
Historical Attraction	\$30.00
State Attraction	\$30.00
Collegiate Insignia	\$25.00
Olympic Games	\$25.00
Special Olympics	\$25.00
<u>University Health Systems of</u>	
<u>Eastern Carolina</u>	\$25.00
March of Dimes	\$20.00
Scenic Rivers	\$20.00
School Technology	\$20.00

Soil and Water Conservation	\$20.00
Wildlife Resources	\$20.00
Personalized	\$20.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	\$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	\$10	\$20	0
In-State Collegiate Insignia	\$10	\$15	0
Out-of-state Collegiate Insignia	\$10	0	\$15
Personalized	\$10	0	\$10
Special Olympics	\$10	\$15	0
Olympic Games	\$10	\$15	0
State Attraction	\$10	\$20	0
March of Dimes	\$10	\$10	0
Scenic Rivers	\$10	\$10	0
School Technology	\$10	\$10	0
Soil and Water Conservation	\$10	\$10	0
University Health Systems of			
<u>Eastern Carolina</u>	\$10	\$15	0
Wildlife Resources	\$10	\$10	0
All other Special Plates	\$10	0	0."

Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b10) University Health Systems of Eastern Carolina. -- The Division must receive 300 or more applications for a University Health Systems of Eastern Carolina plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of University Health Systems of Eastern Carolina plates to the Pitt Memorial Hospital Foundation, Inc., for use in the Children's Hospital of Eastern North Carolina."

Section 5. G.S. 20-79.6 reads as rewritten:

"§ 20-79.6. *Special registration plates for members of the judiciary.*

(a) ~~Appellate Division, Supreme Court. -- A special plate issued to a Justice or Judge of the North Carolina Appellate Courts shall bear the letter "J" followed by a number from 1 through 19, of the North Carolina Supreme Court shall bear the words 'Supreme Court' and the Great Seal of North Carolina and a number from 1 through 7.~~
The Chief Justice of the Supreme Court of North Carolina shall be

issued the plate bearing the number 1 and the remaining plates shall be issued to the Associate Justices on the basis of seniority.

Special plates issued to retired members of the Supreme Court shall bear a number indicating the member's position of seniority at the time of retirement followed by the letter 'X' to indicate the member's retired status.

(a1) Court of Appeals. -- A special plate issued to a Judge of the North Carolina Court of Appeals shall bear the words 'Court of Appeals' and the Great Seal of North Carolina and a number beginning with the number 1. The Chief Judge of the North Carolina Court of Appeals shall be issued ~~the next judicial plate~~ a plate with the number 1 and the remaining plates shall be issued to the Associate Judges with the numbers assigned on the basis of seniority.

~~Special plates issued to retired members of the Supreme Court and the Court of Appeals shall bear a number indicating the member's position of seniority at the time of retirement followed by the letter 'X' to indicate the member's retired status.~~

(b) Superior Court. -- A special plate issued to a resident superior court judge shall bear the letter 'J' followed by a number indicative of the judicial district the judge serves. The number issued to the senior resident superior court judge shall be ~~equal to the sum of the numerical designation of the judge's judicial district, as defined in G.S. 7A-41.1(a)(1), plus 20. G.S. 7A-41.1(a)(1).~~ If a district has more than one regular resident superior court judge, a special plate for a resident superior court judge of that district shall bear the number issued to the senior resident superior court judge followed by a hyphen and a letter of the alphabet beginning with the letter 'A' to indicate the judge's seniority.

For a set of districts as defined in G.S. 7A-41.1(a)(2), other than ~~7A and 7C,~~ districts where there are two or more resident superior court judges, the number issued to the senior resident superior court judge shall be ~~equal to the sum of 20 plus the number the districts in the set have in common.~~ A special plate issued to the other regular resident superior court judges of the set of districts shall bear the number issued to the senior resident superior court judge followed by a hyphen and a letter of the alphabet beginning with the letter 'A' to indicate the judge's seniority among all of the regular resident superior court judges of the set of districts. The letter assigned to a resident superior court judge will not necessarily correspond with the letter designation of the district the judge serves. ~~For the set of districts 7B and 7C, the senior resident superior court judge for that set shall be issued a special plate bearing the designation 27C following the letter "J", and all other resident superior court judges of the set shall be issued a special plate bearing that designation followed by the letter "B".~~

Where there are two or more regular resident superior court judges for the district or set of districts, the registration plate with the letter 'A' shall be issued to the judge who, from among all the regular resident superior court judges of the district or set of districts, has the

most continuous service as a regular resident superior court judge; provided if two or more judges are of equal service, the oldest of those judges shall receive the next letter registration plate. Thereafter, registration plates shall be issued based on seniority within the district or set of districts.

A special judge, emergency judge, or retired judge of the superior court shall be issued a special plate bearing the letter 'J' followed by a number designated by the Administrative Office of the Courts with the approval of the Chief Justice of the Supreme Court of North Carolina. The plate for a retired judge shall have the letter 'X' after the designated number to indicate the judge's retired status.

(c) District Court. -- A special plate issued to a North Carolina district court judge shall bear the letter 'J' followed by a number. For the chief judge of the district court district, the number shall be equal to the sum of the numerical designation of the district court district the chief judge serves, plus 100. The number for all other judges of the district courts serving within the same district court district shall be the same number as appears on the special plate issued to the chief district judge followed by a letter of the alphabet beginning with the letter 'A' to indicate the judge's seniority. A retired district court judge shall be issued a similar plate except that the numerical designation shall be followed by the letter 'X' to indicate the judge's retired status.

(d) United States. -- A special plate issued to a Justice of the United States Supreme Court, a Judge of the United States Circuit Court of Appeals, or a District Judge of the United States District Court residing in North Carolina shall bear the words 'U.S. J' followed by a number beginning with '1'. The number shall reflect the judge's seniority based on continuous service as a United States Judge as designated by the Secretary of State. A judge who has retired or taken senior status shall be issued a similar plate except that the number shall be based on the date of the judge's retirement or assumption of senior status and shall follow the numerical designation of active justices and judges."

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:39 p.m. on the 5th day of August, 1999.

S.B. 254

SESSION LAW 1999-404

AN ACT TO INCREASE VARIOUS OUTDOOR ADVERTISING PERMIT FEES, EXPAND CURRENT NOTIFICATION REQUIREMENTS, AND MODIFY AND UPDATE THE OUTDOOR ADVERTISING CONTROL ACT WITH RESPECT TO VENUE REQUIREMENTS, DEFINITIONS, AND PARTIES RESPONSIBLE FOR PAYMENT OF REMOVAL OF ILLEGAL OUTDOOR ADVERTISING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-133 reads as rewritten:

"§ 136-133. *Permits required.*

(a) No person shall erect or maintain any outdoor advertising within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by rules ~~and regulations promulgated~~ adopted by the Department of Transportation. The permit shall be valid until revoked for nonconformance with this Article or rules ~~and regulations promulgated~~ adopted by the Department of ~~Transportation thereunder.~~ Transportation. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules ~~and regulations enacted~~ adopted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Department of Transportation shall have the authority to charge permit fees to defray the costs of administering the permit procedures under this Article. The fees for directional signs as set forth in G.S. 136-129(1) and G.S. 136-129.1(1) shall not exceed a ~~twenty dollar (\$20.00)~~ forty dollar (\$40.00) initial fee and a ~~fifteen dollar (\$15.00)~~ thirty dollar (\$30.00) annual renewal fee. The fees for outdoor advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed a ~~sixty dollar (\$60.00)~~ one hundred twenty dollar (\$120.00) initial fee and a ~~thirty dollar (\$30.00)~~ sixty dollar (\$60.00) annual renewal fee.

(b) If outdoor advertising is under construction and the Department of Transportation determines that a permit has not been issued for the outdoor advertising, the Department may require that all work on the outdoor advertising cease until the owner of the outdoor advertising shows that the outdoor advertising does not violate this section. The stopwork order shall be prominently posted on the outdoor advertising structure, and no further notice of the stopwork order is required. The failure of an owner of outdoor advertising to comply immediately with the stopwork order shall subject the outdoor advertising to removal by the Department of Transportation or its agents. Outdoor advertising is under construction when it is in any phase of construction prior to the attachment and display of the advertising message in final position for viewing by the traveling public. The cost of removing outdoor advertising by the Department of Transportation or its agents pursuant to this section shall be assessed against the owner of the unpermitted outdoor advertising by the Department of Transportation. No stopwork order may be issued when the

Department of Transportation process agent has been served with a court order allowing the sign to be constructed."

Section 2. G.S. 136-134 reads as rewritten:

"§ 136-134. Illegal advertising.

Any outdoor advertising erected or maintained adjacent to the right-of-way of the interstate or primary highway system after the effective date of this Article as determined by G.S. 136-140, in violation of the provisions of this Article or rules ~~and regulations promulgated~~ adopted by the Department of Transportation, or any outdoor advertising maintained without a permit regardless of the date of erection shall be illegal and shall constitute a nuisance. The Department of Transportation or its agents shall give 30 days' notice to the owner of the illegal outdoor advertising with the exception of the owner of unlawful portable outdoor advertising for which the Department of Transportation shall give five days' notice, if such owner is known or can by reasonable diligence be ascertained, to remove the outdoor advertising or to make it conform to the provisions of this Article or rules ~~and regulations promulgated~~ adopted by the Department of Transportation hereunder. The Department of Transportation or its agents shall have the right to remove the illegal outdoor advertising at the expense of the ~~said~~ owner if the ~~said~~ owner fails to ~~act~~ remove the outdoor advertising or to make it conform to the provisions of this Article or rules issued by the Department of Transportation within 30 days after receipt of such notice or five days for owners of portable outdoor advertising. The Department of Transportation or its agents may enter upon private property for the purpose of removing the outdoor advertising prohibited by this Article or rules ~~and regulations promulgated~~ adopted by the Department of Transportation hereunder without civil or criminal liability. The costs of removing the outdoor advertising, whether by the Department of Transportation or its agents, shall be assessed against the owner of the illegal outdoor advertising by the Department of Transportation. Any person aggrieved by the decision declaring the outdoor advertising structure illegal shall be granted the right to appeal the decision in accordance with the terms of the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal."

Section 3. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-134.2. Notification requirements.

When the Department of Transportation notifies a permit applicant, permit holder, or the owner of an outdoor advertising structure that the application is denied, the permit revoked, or the structure is in violation of this Article or rules issued pursuant to this Article, it shall do so in writing by certified mail, return receipt requested, and shall include a copy of this Article and all rules issued pursuant to this Article.

If the Department of Transportation fails to include a copy of this Article and the rules, the time period during which the permit applicant, permit holder, or owner of the outdoor advertising structure has to request a review hearing shall be tolled until the Department of Transportation provides the required materials."

Section 4. G.S. 136-135 reads as rewritten:

"§ 136-135. Enforcement provisions.

Any person, firm, corporation or association, placing, erecting or maintaining outdoor advertising along the interstate system or primary system in violation of this Article or rules ~~and regulations promulgated adopted~~ by the Department of Transportation shall be guilty of a Class 1 misdemeanor. In addition thereto, the Department of Transportation may seek injunctive relief in the Superior Court of Wake County or of the county where the outdoor advertising is located and require the outdoor advertising to conform to the provisions of this Article or rules ~~and regulations promulgated adopted~~ pursuant hereto, or require the removal of the said illegal outdoor advertising."

Section 5. Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-18.7. Fees.

The fee for a selective vegetation removal permit issued pursuant to G.S. 136-18(5), (7), and (9) is two hundred dollars (\$200.00)."

Section 6. G.S. 136-127 reads as rewritten:

"§ 136-127. Declaration of policy.

The General Assembly hereby finds and declares that outdoor advertising is a legitimate commercial use of private property adjacent to roads and highways but that the erection and maintenance of outdoor advertising signs and devices in areas in the vicinity of the right-of-way of the interstate and primary ~~highways~~ highway systems within the State should be controlled and regulated in order to promote the safety, health, welfare and convenience and enjoyment of travel on and protection of the public investment in highways within the State, to prevent unreasonable distraction of operators of motor vehicles and to prevent interference with the effectiveness of traffic regulations and to promote safety on the highways, to attract tourists and promote the prosperity, economic well-being and general welfare of the State, and to preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and devices. It is the intention of the General Assembly to provide and declare herein a public policy and statutory basis for the regulation and control of outdoor advertising."

Section 7. G.S. 136-128 reads as rewritten:

"§ 136-128. Definitions.

As used in this Article:

(1) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(1a) "Illegal sign" means one which was erected and/or maintained in violation of State law.

(1b) "Information center" means an area or site established and maintained at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as the Department of Transportation may consider desirable.

(2) "Interstate system" means that portion of the National System of Interstate and Defense Highways located within the State, as officially designated, or as may hereafter be so designated, by the Department of Transportation, or other appropriate authorities and are also so designated by interstate numbers. As to highways under construction so designated as interstate highways pursuant to the above procedures, the highway shall be a part of the interstate system for the purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal authorities.

(2a) "Nonconforming sign" shall mean a sign which was lawfully erected but which does not comply with the provisions of State law or State rules and regulations passed at a later date or which later fails to comply with State law or State rules or regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

(3) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or any other thing which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the interstate or primary system, whether the same be permanent or portable installation.

(4) ~~"Primary systems" means that portion of connected main highways, as now officially designated, or as may hereafter be so designated by the Department of Transportation as primary system, or other appropriate authorities and are also so designated by N.C. or U.S. numbers.~~ means the federal-aid primary system in existence on June 1, 1991, and any highway which is not on that system but which is on the National Highway System. As to highways under construction so designated as primary highways pursuant to the above procedures, the highway shall be a part of the primary system for purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal or State authorities.

(5) "Safety rest area" means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control, for the convenience of the traveling public.

(6) "State law" means a State constitutional provision or statute, or an ordinance, rule or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to a State Constitution or statute.

(7) "Unzoned area" shall mean an area where there is no zoning in effect.

(8) "Urban area" shall mean an area within the boundaries or limits of any incorporated municipality having a population of five thousand or more as determined by the latest available federal census.

(9) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity."

Section 8. G.S. 136-129 reads as rewritten:

"§ 136-129. *Limitations of outdoor advertising devices.*

No outdoor advertising shall be erected or maintained within 660 feet of the nearest edge of the right-of-way of the interstate or primary ~~highways~~ highway systems in this State so as to be visible from the main-traveled way thereof after the effective date of this Article as determined by G.S. 136-140, except the following:

- (1) Directional and other official signs and notices, which signs and notices shall include those authorized and permitted by Chapter 136 of the General Statutes, which include but are not limited to official signs and notices pertaining to natural wonders, scenic and historic attractions and signs erected and maintained by a public utility, electric or telephone membership corporation, or municipality for the purpose of giving warning of or information as to the location of an underground cable, pipeline or other installation.
- (2) Outdoor advertising which advertises the sale or lease of property upon which it is located.
- (2a) Outdoor advertising which advertises the sale of any fruit or vegetable crop by the grower at a roadside stand or by having the purchaser pick the crop on the property on which the crop is grown provided: (i) the sign is no more than two feet long on any side; (ii) the sign is located on property owned or leased by the grower where the crop is grown; (iii) the grower is also the seller; and (iv) the sign is kept in place by the grower for no more than 30 days.
- (3) Outdoor advertising which advertises activities conducted on the property upon which it is located.
- (4) Outdoor advertising, in conformity with the rules and regulations promulgated by the Department of Transportation, located in areas which are zoned industrial or commercial under authority of State law.
- (5) Outdoor advertising, in conformity with the rules and regulations promulgated by the Department of Transportation, located in unzoned commercial or industrial areas."

Section 9. G.S. 136-129.1 reads as rewritten:

"§ 136-129.1. *Limitations of outdoor advertising devices beyond 660 feet.*

No outdoor advertising shall be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary ~~highways~~ highway systems in this State outside of the urban areas so

as to be visible and intended to be read from the main-traveled way except the following:

- (1) Directional and other official signs and notices, which signs and notices shall include those authorized and permitted by Chapter 136 of the General Statutes, which include but are not limited to official signs and notices pertaining to natural wonders, scenic and historic attractions and signs erected and maintained by a public utility, electric or telephone membership corporation, or municipality for the purpose of giving warning of or information as to the location of an underground cable, pipeline or other installation.
- (2) Outdoor advertising which advertises the sale or lease of property upon which it is located.
- (3) Outdoor advertising which advertises activities conducted on the property upon which it is located."

Section 10. G.S. 136-136 reads as rewritten:

"§ 136-136. *Zoning changes.*

All zoning authorities shall give written notice to the Department of Transportation of the establishment or revision of any commercial and industrial zones within 660 feet of the right-of-way of interstate or primary ~~highways~~, highway systems. Notice shall be by registered mail sent to the offices of the Department of Transportation in Raleigh, North Carolina, within 15 days after the effective date of the zoning change or establishment."

Section 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:43 p.m. on the 5th day of August, 1999.

S.B. 117

SESSION LAW 1999-405

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE APPOINTMENTS BILL.

The General Assembly of North Carolina enacts:

Section 1. If Senate Bill 437, 1999 Regular Session, becomes law, then G.S. 120-74, as rewritten by that act, reads as rewritten:

"§ 120-74. *Appointment of members; terms of office.*

The Commission shall consist of ~~34~~ 36 members. The President pro tempore of the Senate, the Speaker pro tempore of the House, the Deputy President pro tempore of the Senate, the Majority Leader of the House of Representatives, and the Majority Leader of the Senate and the Speaker of the House shall serve as ex officio members of the Commission. The Speaker of the House of Representatives shall appoint 15 members from the House. The President pro tempore of the Senate shall appoint 15 members from the Senate. Vacancies created by resignation or otherwise shall be filled by the original appointing authority. Members shall serve two-year terms beginning

and ending on January 15 of the odd-numbered years. Members shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission."

Section 2. If Senate Bill 437, 1999 Regular Session, becomes law, then G.S. 93A-3(a), as rewritten by that act, reads as rewritten:

"(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the ~~President Pro Tempore of the Senate~~ Speaker of the House of Representatives in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate brokers or real estate salesmen. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of two members expire in one year, the terms of two members expire in the next year, and the terms of three members expire in the third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122."

Section 3. If Senate Bill 437, 1999 Regular Session, becomes law, then G.S. 90-139(a), as rewritten by that act, reads as rewritten:

"(a) The State Board of Chiropractic Examiners is created to consist of eight members appointed by the Governor, and General Assembly. Seven of the members shall be practicing doctors of chiropractic, who are residents of this State and who have actively practiced chiropractic in the State for at least eight consecutive years immediately preceding their appointments; ~~four~~ five of these seven members shall be appointed by the Governor, and two by the General Assembly in accordance with G.S. 120-121, one each upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. No more than three members of the Board may be graduates of the same college or school of chiropractic. The other member shall be a person chosen by the Governor to represent the public at large. The public member shall not be a health care provider nor the spouse of a health care provider. For purposes of Board membership, "health care provider" means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional

school, or a member of any allied health profession. For purposes of this section, a person enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this section, any person with significant financial interest in a health service or profession is not a public member."

Section 4. If Senate Bill 437, 1999 Regular Session, becomes law, then Section 2.11 of that act reads as rewritten:

"Section 2.11. Gary Eichelberger of ~~Wake~~ Wayne County is appointed to the Crime Victims Compensation Commission for a term expiring June 30, 2003."

Section 5. If Senate Bill 437, 1999 Regular Session, becomes law, then Section 2.26 of that act reads as rewritten:

"Section 2.26. Fred Yates of ~~Hertford~~ Perquimans County, Edmond Buckman of Beaufort County, and G.B. Warner of ~~Pasquotank~~ Hyde County are appointed to the Northeastern North Carolina Regional Economic Development Commission for terms expiring June 30, 2003."

Section 6. Upon the recommendation of the Speaker of the House of Representatives, William Lackey of Mecklenburg County is appointed to the North Carolina Real Estate Commission for a term expiring June 30, 2002.

Section 7. If Senate Bill 437, 1999 Regular Session, becomes law, then Section 1.11 of that act reads as rewritten:

"Section 1.11. ~~Michael Weisel of Wake County and Thomas P. Dillion of Union County are~~ is appointed to the Board of Directors of the North Carolina Railroad for ~~terms~~ a term expiring June 30, 2001. Robert F. Bleeker of Cumberland County and Michael Weisel of Wake County ~~are~~ is appointed to the Board of Directors of the North Carolina Railroad for ~~a term~~ terms expiring June 30, 2003."

Section 7.1. If Senate Bill 968 becomes law, then the amendments made by that act to G.S. 143-53(a)(1), 143-53(a)(5), and 143-57 do not apply to Special Responsibility Constituent Institutions as designated by the Board of Governors of The University of North Carolina pursuant to G.S. 116-30.1.

Section 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

Became law upon approval of the Governor at 9:44 p.m. on the 5th day of August, 1999.

H.B. 1135

SESSION LAW 1999-406

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE GOVERNOR'S DWI TASK FORCE.

The General Assembly of North Carolina enacts:

PART I. LOWER TOLERANCE FOR REPEAT OFFENDERS

Section 1. G.S. 20-16.2 reads as rewritten:

"§ 20-16.2. *Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.*

(a) **Basis for Charging Officer to Require Chemical Analysis; Notification of Rights.** -- Any person who drives a vehicle on a highway or public vehicular area thereby gives consent to a chemical analysis if charged with an implied-consent offense. The charging officer shall designate the type of chemical analysis to be administered, and it may be administered when the officer has reasonable grounds to believe that the person charged has committed the implied-consent offense.

Except as provided in this subsection or subsection (b), before any type of chemical analysis is administered the person charged shall be taken before a chemical analyst authorized to administer a test of a person's breath, who shall inform the person orally and also give the person a notice in writing that:

- (1) The person has a right to refuse to be tested.
- (2) Refusal to take any required test or tests will result in an immediate revocation of the person's driving privilege for at least 30 days and an additional 12-month revocation by the Division of Motor Vehicles.
- (3) The test results, or the fact of the person's refusal, will be admissible in evidence at trial on the offense charged.
- (4) The person's driving privilege will be revoked immediately for at least 30 days if:
 - a. The test reveals an alcohol concentration of 0.08 or more;
 - b. The person was driving a commercial motor vehicle and the test reveals an alcohol concentration of 0.04 or more; or
 - c. The person is under 21 years of age and the test reveals any alcohol concentration.
- (5) The person may choose a qualified person to administer a chemical test or tests in addition to any test administered at the direction of the charging officer.
- (6) The person has the right to call an attorney and select a witness to view for him or her the testing procedures, but the testing may not be delayed for these purposes longer than 30 minutes from the time when the person is notified of his or her rights.

If the charging officer or an arresting officer is authorized to administer a chemical analysis of a person's breath, the charging officer or the arresting officer may give the person charged the oral and written notice of rights required by this subsection. This authority applies regardless of the type of chemical analysis designated.

(a1) **Meaning of Terms.** -- Under this section, an "implied-consent offense" is an offense involving impaired driving or an alcohol-related offense made subject to the procedures of this section. A person is "charged" with an offense if the person is arrested for it or if criminal process for the offense has been issued. A "charging officer" is a law-

enforcement officer who arrests the person charged, lodges the charge, or assists the officer who arrested the person or lodged the charge by assuming custody of the person to make the request required by subsection (c) and, if necessary, to present the person to a judicial official for an initial appearance.

(b) **Unconscious Person May Be Tested.** -- If a charging officer has reasonable grounds to believe that a person has committed an implied-consent offense, and the person is unconscious or otherwise in a condition that makes the person incapable of refusal, the charging officer may direct the taking of a blood sample by a person qualified under G.S. 20-139.1 or may direct the administration of any other chemical analysis that may be effectively performed. In this instance the notification of rights set out in subsection (a) and the request required by subsection (c) are not necessary.

~~(c) **Request to Submit to Chemical Analysis; Procedure upon Refusal.** -- The charging officer, in the presence of the chemical analyst who has notified the person of his or her rights under subsection (a), must request the person charged to submit to the type of chemical analysis designated. If the person charged willfully refuses to submit to that chemical analysis, none may be given under the provisions of this section, but the refusal does not preclude testing under other applicable procedures of law. If the person refuses to submit to the chemical analysis, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit stating that the person charged, after being advised of his or her rights under subsection (a), willfully refused to submit to a chemical analysis at the request of the charging officer. The charging officer must immediately mail the affidavit to the Division. If the person's refusal to submit to a chemical analysis occurs in a case involving death or critical injury to another person, the charging officer must include that fact in the affidavit mailed to the Division. If the charging officer is also the chemical analyst who has notified the person of his or her rights under subsection (a), the charging officer may perform alone the duties of this subsection.~~

(c1) **Procedure for Reporting Results and Refusal to Division.** -- Whenever a person refuses to submit to a chemical analysis or a person's drivers license has an alcohol concentration restriction and the results of the chemical analysis establish a violation of the restriction, the charging officer and the chemical analyst must without unnecessary delay go before an official authorized to administer oaths and execute an affidavit(s) stating that:

- (1) The person was charged with an implied-consent offense or had an alcohol concentration restriction on the drivers license;
- (2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent offense or violated the alcohol concentration restriction on the drivers license;

- (3) Whether the implied-consent offense charged involved death or critical injury to another person, if the person willfully refused to submit to chemical analysis;
- (4) The person was notified of the rights in subsection (a); and
- (5) The results of any tests given or that the person willfully refused to submit to a chemical analysis upon the request of the charging officer.

The charging officer must immediately mail the affidavit(s) to the Division. If the charging officer is also the chemical analyst who has notified the person of the rights under subsection (a), the charging officer may perform alone the duties of this subsection.

(d) Consequences of Refusal; Right to Hearing before Division; Issues. -- Upon receipt of a properly executed affidavit required by subsection ~~(c)~~, (c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for 12 months, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that his or her license was surrendered to the court, and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the 12-month revocation period required by this subsection. If the person properly requests a hearing, the person retains his or her license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

- (1) The person was charged with an implied-consent ~~offense~~; offense or the driver had an alcohol concentration restriction on the drivers license pursuant to G.S. 20-19;
- (2) The charging officer had reasonable grounds to believe that the person had committed an implied-consent ~~offense~~; offense or violated the alcohol concentration restriction on the drivers license;
- (3) The implied-consent offense charged involved death or critical injury to another person, if this allegation is in the affidavit;

- (4) The person was notified of ~~his or her~~ the person's rights as required by subsection (a); and
- (5) The person willfully refused to submit to a chemical analysis upon the request of the charging officer.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (4), or (5) is not met, it must rescind the revocation. If it finds that condition (3) is alleged in the affidavit but is not met, it must order the revocation sustained if that is the only condition that is not met; in this instance subsection (d1) does not apply to that revocation. If the revocation is sustained, the person must surrender his or her license immediately upon notification by the Division.

(d1) Consequences of Refusal in Case Involving Death or Critical Injury. -- If the refusal occurred in a case involving death or critical injury to another person, no limited driving privilege may be issued. The 12-month revocation begins only after all other periods of revocation have terminated unless the person's license is revoked under G.S. 20-28, 20-28.1, 20-19(d), or 20-19(e). If the revocation is based on those sections, the revocation under this subsection begins at the time and in the manner specified in subsection (d) for revocations under this section. However, the person's eligibility for a hearing to determine if the revocation under those sections should be rescinded is postponed for one year from the date on which the person would otherwise have been eligible for such a hearing. If the person's driver's license is again revoked while the 12-month revocation under this subsection is in effect, that revocation, whether imposed by a court or by the Division, may only take effect after the period of revocation under this subsection has terminated.

(e) Right to Hearing in Superior Court. -- If the revocation for a willful refusal is sustained after the hearing, the person whose license has been revoked has the right to file a petition in the superior court for a hearing de novo upon the issues listed in subsection (d), in the same manner and under the same conditions as provided in G.S. 20-25 except that the de novo hearing is conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 where the charge was made.

(e1) Limited Driving Privilege after Six Months in Certain Instances. -- A person whose driver's license has been revoked under this section may apply for and a judge authorized to do so by this subsection may issue a limited driving privilege if:

- (1) At the time of the refusal the person held either a valid drivers license or a license that had been expired for less than one year;
- (2) At the time of the refusal, the person had not within the preceding seven years been convicted of an offense involving impaired driving;

- (3) At the time of the refusal, the person had not in the preceding seven years willfully refused to submit to a chemical analysis under this section;
- (4) The implied-consent offense charged did not involve death or critical injury to another person;
- (5) The underlying charge for which the defendant was requested to submit to a chemical analysis has been finally disposed of:
 - a. Other than by conviction; or
 - b. By a conviction of impaired driving under G.S. 20-138.1, at a punishment level authorizing issuance of a limited driving privilege under G.S. 20-179.3(b), and the defendant has complied with at least one of the mandatory conditions of probation listed for the punishment level under which the defendant was sentenced;
- (6) Subsequent to the refusal the person has had no unresolved pending charges for or additional convictions of an offense involving impaired driving;
- (7) The person's license has been revoked for at least six months for the refusal; and
- (8) The person has obtained a substance abuse assessment from a mental health facility and successfully completed any recommended training or treatment program.

Except as modified in this subsection, the provisions of G.S. 20-179.3 relating to the procedure for application and conduct of the hearing and the restrictions required or authorized to be included in the limited driving privilege apply to applications under this subsection. If the case was finally disposed of in the district court, the hearing shall be conducted in the district court district as defined in G.S. 7A-133 in which the refusal occurred by a district court judge. If the case was finally disposed of in the superior court, the hearing shall be conducted in the superior court district or set of districts as defined in G.S. 7A-41.1 in which the refusal occurred by a superior court judge. A limited driving privilege issued under this section authorizes a person to drive if the person's license is revoked solely under this section or solely under this section and G.S. 20-17(2). If the person's license is revoked for any other reason, the limited driving privilege is invalid.

(f) Notice to Other States as to Nonresidents. -- When it has been finally determined under the procedures of this section that a nonresident's privilege to drive a motor vehicle in this State has been revoked, the Division must give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

(g) Repealed by Session Laws 1973, c. 914.

(h) Repealed by Session Laws 1979, c. 423, s. 2.

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is

investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

- (1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;
- (2) That the person's license will be revoked for at least 30 days if:
 - a. The test reveals an alcohol concentration of 0.08 or more; or
 - b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or more.
- (3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 2. G.S. 20-19 reads as rewritten:

"§ 20-19. *Period of suspension or ~~revocation~~ revocation; conditions of restoration.*

(a) When a license is suspended under subdivision (8) or (9) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed six months.

(b) When a license is suspended under subdivision (10) of G.S. 20-16(a), the period of suspension shall be in the discretion of the Division and for such time as it deems best for public safety but shall not exceed a period of 12 months.

(c) When a license is suspended under any other provision of this Article which does not specifically provide a period of suspension, the period of suspension shall be not more than one year.

(c1) When a license is revoked under subdivision (2) of G.S. 20-17, and the period of revocation is not determined by subsection (d) or (e) of this section, the period of revocation is one year.

(c2) When a license is suspended under G.S. 20-17(a)(14), the period of revocation for a first conviction shall be for 10 days. For a

second or subsequent conviction as defined in G.S. 20-138.2B(d), the period of revocation shall be one year.

(c3) Restriction; Revocations. -- When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision (1) or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

- (1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;
- (2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;
- (3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving;
- (4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the

person not operate a vehicle with an alcohol concentration of 0.00 or more at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated.

(c4) Applicable Procedures. -- When a person has violated a condition of restoration by refusing a chemical analysis, the notice and hearing procedures of G.S. 20-16.2 apply. When a person has submitted to a chemical analysis and the results show a violation of the alcohol concentration restriction, the notification and hearing procedures of this section apply.

(c5) Right to Hearing Before Division; Issues. -- Upon receipt of a properly executed affidavit required by G.S. 20-16.2(c1), the Division must expeditiously notify the person charged that the person's license to drive is revoked for the period of time specified in this section, effective on the tenth calendar day after the mailing of the revocation order unless, before the effective date of the order, the person requests in writing a hearing before the Division. Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer

deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

- (1) The charging officer had reasonable grounds to believe that the person had violated the alcohol concentration restriction;
- (2) The person was notified of the person's rights as required by G.S. 20-16.2(a);
- (3) The drivers license of the person had an alcohol concentration restriction; and
- (4) The person submitted to a chemical analysis upon the request of the charging officer, and the analysis revealed an alcohol concentration in excess of the restriction on the person's drivers license.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that any of the conditions (1), (2), (3), or (4) is not met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division.

(c6) Appeal to Court. -- There is no right to appeal the decision of the Division. However, if the person properly requested a hearing before the Division under subsection (c5) and the Division held such a hearing, the person may within 30 days of the date the Division's decision is mailed to the person, petition the superior court of the county in which the hearing took place for discretionary review on the record of the revocation. The superior court may stay the imposition of the revocation only if the court finds that the person is likely to succeed on the merits of the case and will suffer irreparable harm if such a stay is not granted. The stay shall not exceed 30 days. The reviewing court shall review the record only and shall be limited to determining if the Division hearing officer followed proper procedures and if the hearing officer made sufficient findings of fact to support the revocation. There shall be no further appeal.

(d) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

- (1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

- (2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period.

(e) When a person's license is revoked under subdivision (2) of G.S. 20-17 and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

- (1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

- (2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration.

(f) When a license is revoked under any other provision of this Article which does not specifically provide a period of revocation, the period of revocation shall be one year.

(g) When a license is suspended under subdivision (11) of G.S. 20-16(a), the period of suspension shall be for a period of time not in excess of the period of nonoperation imposed by the court as a condition of the suspended sentence; further, in such case, it shall not be necessary to comply with the Motor Vehicle Safety and Financial Responsibility Act in order to have such license returned at the expiration of the suspension period.

(g1) When a license is revoked under subdivision (12) of G.S. 20-17, the period of revocation is six months for conviction of a second offense and one year for conviction of a third or subsequent offense.

(h) Repealed by Session Laws 1983, c. 435, s. 17.

(i) When a person's license is revoked under subdivision (1) or (9) of G.S. 20-17 and the offense is one involving impaired driving, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years in accordance with the procedure in subsection (e) of this section.

(j) The Division is authorized to issue amended revocation orders issued under subsections (d) and (e), if necessary because convictions do not respectively occur in the same order as offenses for which the license may be revoked under those subsections.

(k) Before the Division restores a driver's license that has been suspended or revoked under any provision of this Article, other than G.S. 20-24.1, the person seeking to have his driver's license restored shall submit to the Division proof that he has notified his insurance agent or company of his seeking the restoration and that he is financially responsible. Proof of financial responsibility shall be in one of the following forms:

- (1) A written certificate or electronically-transmitted facsimile thereof from any insurance carrier duly authorized to do business in this State certifying that there is in effect a nonfleet private passenger motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate or facsimile shall state the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy and shall state the date that the certificate or facsimile is issued. The certificate or facsimile shall remain effective proof of financial responsibility for a period of 30 consecutive days following the date the certificate or facsimile is issued but shall not in and of itself constitute a binder or policy of insurance or
- (2) A binder for or policy of nonfleet private passenger motor vehicle liability insurance under which the applicant is insured, provided that the binder or policy states the effective date and expiration date of the nonfleet private passenger motor vehicle liability policy.

The preceding provisions of this subsection do not apply to applicants who do not own currently registered motor vehicles and who do not operate nonfleet private passenger motor vehicles that are owned by other persons and that are not insured under commercial motor vehicle liability insurance policies. In such cases, the applicant shall sign a written certificate to that effect. Such certificate shall be furnished by the Division and may be incorporated into the restoration application form. Any material misrepresentation made by such person on such certificate shall be grounds for suspension of that person's license for a period of 90 days.

For the purposes of this subsection, the term "nonfleet private passenger motor vehicle" has the definition ascribed to it in Article 40 of General Statute Chapter 58.

The Commissioner may require that certificates required by this subsection be on a form approved by the Commissioner. The financial responsibility required by this subsection shall be kept in effect for not less than three years after the date that the license is restored. Failure to maintain financial responsibility as required by this subsection shall be grounds for suspending the restored driver's license for a period of

thirty (30) days. Nothing in this subsection precludes any person from showing proof of financial responsibility in any other manner authorized by Articles 9A and 13 of this Chapter."

PART II. IGNITION INTERLOCK

Section 3. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-17.7. Restoration of a license after certain driving while impaired convictions; ignition interlock.

(a) Scope. -- This section applies to a person whose license was revoked as a result of a conviction of driving while impaired, G.S. 20-138.1, and:

- (1) The person had an alcohol concentration of 0.16 or more;
or
- (2) The person has been convicted of another offense involving impaired driving, which offense occurred within seven years immediately preceding the date of the offense for which the person's license has been revoked.

(b) Ignition Interlock Required. -- When the Division restores the license of a person who is subject to this section, in addition to any other restriction or condition, it shall require the person to agree to and shall indicate on the person's drivers license the following restrictions for the period designated in subsection (c):

- (1) A restriction that the person may operate only a vehicle that is equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.
- (2) A requirement that the person personally activate the ignition interlock system before driving the motor vehicle.
- (3) A requirement that the person not drive with an alcohol concentration of 0.04 or greater.

(c) Length of Requirement. -- The requirements of subsection (b) shall remain in effect for:

- (1) One year from the date of restoration if the original revocation period was one year;
- (2) Three years from the date of restoration if the original revocation period was four years; or
- (3) Seven years from the date of restoration if the original revocation was a permanent revocation.

(d) Effect of Limited Driving Privileges. -- If the person was eligible for and received a limited driving privilege under G.S. 20-179.3, with the ignition interlock requirement contained in G.S. 20-179.3(g5), the period of time for which that limited driving privilege was held shall be applied towards the requirements of subsection (c).

(e) Notice of Requirement. -- When a court reports to the Division a conviction of a person who is subject to this section, the Division must send the person written notice of the requirements of this section and of the consequences of failing to comply with these requirements. The notification must include a statement that the person may contact the Division for information on obtaining and having installed an ignition interlock system of a type approved by the Commissioner.

(f) Effect of Violation of Restriction. -- A person subject to this section who violates any of the restrictions of this section commits the offense of driving while license revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law enforcement officer has reasonable grounds to believe that a person subject to this section has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a person subject to this section is charged with driving while license revoked by violating a condition of subsection (b) of this section, and a judicial official determines that there is probable cause for the charge, the person's license is suspended pending the resolution of the case, and the judicial official must require the person to surrender the license. The judicial official must also notify the person that he is not entitled to drive until his case is resolved. An alcohol concentration report from the ignition interlock system shall not be admissible as evidence of driving while license revoked, nor shall it be admissible in an administrative revocation proceeding as provided in subsection (g) of this section; provided that the person did not operate a vehicle until the ignition interlock system indicated an alcohol concentration of less than 0.04.

(g) Effect of Violation of Restriction When Driving While License Revoked not Charged. -- A person subject to this section who violates any of the restrictions of this section, but is not charged or convicted of driving while license revoked pursuant to G.S. 20-28(a), shall have the person's license revoked by the Division for a period of one year.

(h) Beginning of Revocation Period. -- If the original period of revocation was imposed pursuant to G.S. 20-19(d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the revocation required by subsection (f) or (g) of this section begins after all other periods of revocation have terminated.

(i) Notification of Revocation. -- If the person's license has not already been surrendered to the court, the Division must expeditiously notify the person that the person's license to drive is revoked pursuant to subsection (f) or (g) of this section effective on the tenth calendar day after the mailing of the revocation order.

(j) Right to Hearing Before Division; Issues. -- If the person's license is revoked pursuant to subsection (g) of this section, before the effective date of the order issued under subsection (i) of this section, the person may request in writing a hearing before the Division.

Except for the time referred to in G.S. 20-16.5, if the person shows to the satisfaction of the Division that the person's license was surrendered to the court and remained in the court's possession, then the Division shall credit the amount of time for which the license was in the possession of the court against the revocation period required by subsection (g) of this section. If the person properly requests a hearing, the person retains the person's license, unless it is revoked under some other provision of law, until the hearing is held, the person withdraws the request, or the person fails to appear at a scheduled hearing. The hearing officer may subpoena any witnesses or documents that the hearing officer deems necessary. The person may request the hearing officer to subpoena the charging officer, the chemical analyst, or both to appear at the hearing if the person makes the request in writing at least three days before the hearing. The person may subpoena any other witness whom the person deems necessary, and the provisions of G.S. 1A-1, Rule 45, apply to the issuance and service of all subpoenas issued under the authority of this section. The hearing officer is authorized to administer oaths to witnesses appearing at the hearing. The hearing must be conducted in the county where the charge was brought, and must be limited to consideration of whether:

- (1) The drivers license of the person had an ignition interlock requirement; and
- (2) The person:
 - a. Was driving a vehicle that was not equipped with a functioning ignition interlock system; or
 - b. Did not personally activate the ignition interlock system before driving the vehicle; or
 - c. Drove the vehicle with an alcohol concentration of 0.04 or greater.

If the Division finds that the conditions specified in this subsection are met, it must order the revocation sustained. If the Division finds that the condition of subdivision (1) is not met, or that none of the conditions of subdivision (2) are met, it must rescind the revocation. If the revocation is sustained, the person must surrender the person's license immediately upon notification by the Division. If the revocation is sustained, the person may appeal the decision of the Division pursuant to G.S. 20-25.

(k) Restoration After Violation. -- When the Division restores the license of a person whose license was revoked pursuant to subsection (f) or (g) of this section and the revocation occurred prior to completion of time period required by subsection (c) of this section, in addition to any other restriction or condition, it shall require the person to comply with the conditions of subsection (b) of this section until the person has complied with those conditions for the cumulative period of time as set forth in subsection (c) of this section. The period of time for which the person successfully complied with subsection (b) of this section prior to revocation pursuant to subsection

(f) or (g) of this section shall be applied towards the requirements of subsection (c) of this section."

Section 4. G.S. 20-179.3 is amended by adding a new subsection to read:

"(g5) Ignition Interlock Required. -- If a person's drivers license is revoked for a conviction of G.S. 20-138.1, and the person had an alcohol concentration of 0.16 or more, a judge shall include all of the following in a limited driving privilege order:

- (1) A restriction that the applicant may operate only a designated motor vehicle.
- (2) A requirement that the designated motor vehicle be equipped with a functioning ignition interlock system of a type approved by the Commissioner. The Commissioner shall not unreasonably withhold approval of an ignition interlock system and shall consult with the Division of Purchase and Contract in the Department of Administration to ensure that potential vendors are not discriminated against.
- (3) A requirement that the applicant personally activate the ignition interlock system before driving the motor vehicle."

Section 5. G.S. 20-179.3(g4) reads as rewritten:

"(g4) The restrictions set forth in subsection (g3) and (g5) of this section do not apply to a motor vehicle that meets all of the following requirements:

- (1) Is owned by the applicant's employer.
- (2) Is operated by the applicant solely for work-related purposes.
- (3) Its owner has filed with the court a written document authorizing the applicant to drive the vehicle, for work-related purposes, under the authority of a limited driving privilege."

PART III. LIMITED DRIVING PRIVILEGE ALCOSENSOR ADMISSIBILITY

Section 6. G.S. 20-179.3(j) reads as rewritten:

"(j) Effect of Violation of Restriction. -- A holder of a limited driving privilege who violates any of its restrictions commits the offense of driving while his license is revoked under G.S. 20-28(a) and is subject to punishment and license revocation as provided in that section. If a law-enforcement officer has reasonable grounds to believe that the holder of a limited driving privilege has consumed alcohol while driving or has driven while he has remaining in his body any alcohol previously consumed, the suspected offense of driving while license is revoked is an alcohol-related offense subject to the implied-consent provisions of G.S. 20-16.2. If a holder of a limited driving privilege is charged with driving while license revoked by violating a restriction contained in his limited driving privilege, and a judicial official determines that there is probable cause for the charge, the limited driving privilege is suspended pending the resolution of the case, and the judicial official must require the holder to surrender the

limited driving privilege. The judicial official must also notify the holder that he is not entitled to drive until his case is resolved.

Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violating this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission for Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to the manner of its use."

PART IV. INCREASE PUNISHMENT FOR 19- OR 20-YEAR OLD PURCHASE OR POSSESSION OF ALCOHOLIC BEVERAGES

Section 7. G.S. 18B-302(i) reads as rewritten:

"(i) Purchase or Possession by 19 or 20-Year Old. -- A violation of subdivision (b)(1) of this section by a person who is 19 or 20 years old is ~~an infraction and is punishable by a fine of not more than twenty five dollars (\$25.00). An infraction is an unlawful act that is not a crime. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. A person convicted of an infraction may not be assessed court costs.~~ a Class 3 misdemeanor."

Section 8. G.S. 15A-145 reads as rewritten:

"§ 15A-145. *Expunction of records for first offenders under the age of 18 at the time of conviction of ~~misdemeanor~~, misdemeanor; expunction of certain other misdemeanors.*

(a) Whenever any person who has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, and (i) petitioner was not 18 years old at the time of the conviction in question, or (ii) petitioner was not 21 years old at the time of the conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The cost of expunging such records shall be taxed against the petitioner.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge."

Section 9. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, or ~~is was~~ charged with an infraction under ~~G.S. 18B-302(i)~~, G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

PART V. OTHER DWI CHANGES

Section 10. G.S. 20-16.2(i) reads as rewritten:

"§ 20-16.2. *Implied consent to chemical analysis; mandatory revocation of license in event of refusal; right of driver to request analysis.*

(i) Right to Chemical Analysis before Arrest or Charge. -- A person stopped or questioned by a law-enforcement officer who is investigating whether the person may have committed an implied-consent offense may request the administration of a chemical analysis before any arrest or other charge is made for the offense. Upon this request, the officer shall afford the person the opportunity to have a chemical analysis of his or her breath, if available, in accordance with the procedures required by G.S. 20-139.1(b). The request constitutes the person's consent to be transported by the law-enforcement officer to the place where the chemical analysis is to be administered. Before the chemical analysis is made, the person shall confirm the request in writing and shall be notified:

- (1) That the test results will be admissible in evidence and may be used against the person in any implied-consent offense that may arise;
- (2) That the person's license will be revoked for at least 30 days if:
 - a. The test reveals an alcohol concentration of 0.08 or more; or
 - b. The person was driving a commercial motor vehicle and the test results reveal an alcohol concentration of 0.04 or ~~more, more; or~~
 - c. The person is under 21 years of age and the test reveals any alcohol concentration.
- (3) That if the person fails to comply fully with the test procedures, the officer may charge the person with any offense for which the officer has probable cause, and if the person is charged with an implied-consent offense, the person's refusal to submit to the testing required as a result of that charge would result in revocation of the person's driver's license. The results of the chemical analysis are admissible in evidence in any proceeding in which they are relevant."

Section 11. G.S. 20-28.2(a) reads as rewritten:

"§ 20-28.2. *Forfeiture of motor vehicle for impaired driving after impaired driving license revocation.*

(a) Meaning of "Impaired Driving License Revocation". -- The revocation of a person's drivers license is an impaired driving license revocation if the revocation is pursuant to:

- (1) G.S. 20-13.2, 20-16(a)(8b), 20-16.2, 20-16.5, 20-17(a)(2), 20-17(a)(12), 20-17.2, or 20-138.5; or
- (2) G.S. 20-16(a)(7), 20-17(a)(1), 20-17(a)(3), 20-17(a)(9), or 20-17(a)(11), if the offense involves impaired ~~driving-~~ driving; or
- (3) The laws of another state and the offense for which the person's license is revoked prohibits substantially similar conduct which if committed in this State would result in a revocation listed in subdivisions (1) or (2)."

Section 12. G.S. 20-28.2(e) reads as rewritten:

"(e) Release of Vehicle to Innocent Motor Vehicle Owner. -- At a forfeiture hearing, if a nondefendant motor vehicle owner establishes by the greater weight of the evidence that: (i) the motor vehicle was being driven by a person who was not the only motor vehicle owner or had no ownership interest in the motor vehicle at the time of the underlying offense and (ii) the petitioner is an "innocent owner", as defined by this section, a judge shall order the motor vehicle released to that owner, conditioned upon payment of all towing and storage charges incurred as a result of the seizure and impoundment of the motor vehicle.

Release to an innocent owner shall only be ordered upon satisfactory proof of:

- (1) The identity of the person as a motor vehicle owner;
- (2) The existence of financial responsibility to the extent required by Article 13 of this ~~Chapter; Chapter or by the laws of the state in which the vehicle is registered; and~~
- (3) ~~Repealed by Session Laws 1998-182, s. 2.~~
- (4) The execution of an acknowledgment as defined in subdivision (a1)(1) of this section.

If the nondefendant owner is a lessor, the release shall also be conditioned upon the lessor agreeing not to sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant or any person acting on the defendant's behalf. A lessor who refuses to sell, give, or transfer possession of a seized motor vehicle to the defendant or any person acting on the behalf of the defendant shall not be liable for damages arising out of the refusal.

No motor vehicle subject to forfeiture under this section shall be released to a nondefendant motor vehicle owner if the records of the Division indicate the motor vehicle owner had previously signed an acknowledgment, as required by this section, and the same person was operating the motor vehicle while that person's license was revoked unless the innocent owner shows by the greater weight of the evidence that the motor vehicle owner has taken all reasonable precautions to prevent the use of the motor vehicle by this particular person and immediately reports, upon discovery, any unauthorized use to the appropriate law enforcement agency. A determination by the court at the forfeiture hearing held pursuant to subsection (d) of this section that the petitioner is not an innocent owner is a final judgment and is immediately appealable to the Court of Appeals."

Section 13. G.S. 20-16.5(e) reads as rewritten:

"(e) Procedure if Report Filed with Judicial Official When Person Is Present. -- If a properly executed revocation report concerning a person is filed with a judicial official when the person is present before that official, the judicial official shall, after completing any other proceedings involving the person, determine whether there is probable cause to believe that each of the conditions of subsection (b) has been met. If he determines that there is such probable cause, he shall enter an order revoking the person's driver's license for the period required in this subsection. The judicial official shall order the person to surrender his license and if necessary may order a law-enforcement officer to seize the license. The judicial official shall give the person a copy of the revocation order. In addition to setting it out in the order the judicial official shall personally inform the person of his right to a hearing as specified in subsection (g), and that his license remains revoked pending the hearing. The revocation under this subsection begins at the time the revocation order is issued and continues until the person's license ~~has been revoked~~ has been surrendered for the period specified in this subsection, and the person has paid the applicable costs. The period of revocation is 30 days, if there are no pending offenses for which the person's license had been or is revoked under this section. If at the time of the current offense,

the person has one or more pending offenses for which his license had been or is revoked under this section, the revocation shall remain in effect until a final judgment, including all appeals, has been entered for the current offense and for all pending offenses. In no event, may the period of revocation under this subsection be less than 30 days. If within five working days of the effective date of the order, the person does not surrender his license or demonstrate that he is not currently licensed, the clerk shall immediately issue a pick-up order. The pick-up order shall be issued to a member of a local law-enforcement agency if the charging officer was employed by the agency at the time of the charge and the person resides in or is present in the agency's territorial jurisdiction. In all other cases, the pick-up order shall be issued to an officer or inspector of the Division. A pick-up order issued pursuant to this section is to be served in accordance with G.S. 20-29 as if the order had been issued by the Division."

Section 14. G.S. 20-4.01(24a) reads as rewritten:

"(24a) Offense Involving Impaired Driving. -- Any of the following offenses:

- a. Impaired driving under G.S. 20-138.1.
 - b. Death by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.
 - c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially equivalent offense under previous law.
 - d. An offense committed in another jurisdiction which prohibits substantially equivalent to similar conduct prohibited by the offenses in subparagraphs a through c. this subsection.
 - e. A repealed or superseded offense substantially equivalent to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.
 - f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.
 - g. Habitual impaired driving under G.S. 20-138.5.
- A conviction under former G.S. 20-140(c) is not an offense involving impaired driving."

Section 15. G.S. 20-138.2A reads as rewritten:

"§ 20-138.2A. *Operating a commercial vehicle after consuming alcohol.*

(a) Offense. -- A person commits the offense of operating a commercial motor vehicle after consuming alcohol if the person drives a commercial motor vehicle, as defined in G.S. 20-4.01(3d)a. and b., upon any highway, any street, or any public vehicular area within the State ~~after having consumed sufficient alcohol that the person has, at~~

any relevant time after the driving, an alcohol concentration greater than 0.00 and less than 0.04, while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.2.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-17(a)(13) and G.S. 20-17.4(a)(6)."

Section 16. G.S. 20-138.2B reads as rewritten:

"§ 20-138.2B. *Operating a school bus, school activity bus, or child care vehicle after consuming alcohol.*

(a) Offense. -- A person commits the offense of operating a school bus, school activity bus, or child care vehicle after consuming alcohol if the person drives a school bus, school activity bus, or child care vehicle upon any highway, any street, or any public vehicular area within the State after having consumed sufficient alcohol that the person has, at any relevant time after the driving, an alcohol concentration greater than 0.00, while consuming alcohol or while alcohol remains in the person's body.

(b) Implied-Consent Offense. -- An offense under this section is an implied-consent offense subject to the provisions of G.S. 20-16.2. The provisions of G.S. 20-139.1 shall apply to an offense committed under this section.

(b1) Odor Insufficient. -- The odor of an alcoholic beverage on the breath of the driver is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining in the driver's body in violation of this section unless the driver was offered an alcohol screening test or chemical analysis and refused to provide all required samples of breath or blood for analysis.

(b2) Alcohol Screening Test. -- Notwithstanding any other provision of law, an alcohol screening test may be administered to a driver suspected of violation of subsection (a) of this section, and the results of an alcohol screening test or the driver's refusal to submit may be used by a law enforcement officer, a court, or an administrative agency in determining if alcohol was present in the driver's body. No alcohol screening tests are valid under this section unless the device used is one approved by the Commission on Health Services, and the screening test is conducted in accordance with the applicable regulations of the Commission as to its manner and use.

(c) Punishment. -- Except as otherwise provided in this subsection, a violation of the offense described in subsection (a) of this section is a Class 3 misdemeanor and, notwithstanding G.S. 15A-1340.23, is punishable by a penalty of one hundred dollars (\$100.00). A second or subsequent violation of this section is a misdemeanor punishable under G.S. 20-179. This offense is a lesser included offense of impaired driving of a commercial vehicle under G.S. 20-138.1.

(d) Second or Subsequent Conviction Defined. -- A conviction for violating this offense is a second or subsequent conviction if at the time of the current offense the person has a previous conviction under this section, and the previous conviction occurred in the seven years immediately preceding the date of the current offense. This definition of second or subsequent conviction also applies to G.S. 20-19(c2)."

Section 17. G.S. 20-28.2(a1)(2) reads as rewritten:

"(2) Innocent Owner. -- A motor vehicle owner:

- a. Who did not know and had no reason to know that the defendant's drivers license was revoked;
- b. Who knew that the defendant's drivers license was revoked, but the defendant drove the vehicle without the person's expressed or implied ~~permission~~, permission, and the owner files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;
- c. Whose vehicle was reported stolen;
- d. ~~Who files a police report for unauthorized use of the motor vehicle and agrees to prosecute the unauthorized operator of the motor vehicle;~~

- e. Who is in the business of renting vehicles, ~~the driver and the vehicle was driven by a person who is not listed as an authorized driver on the rental contract; or~~
- f. Who is in the business of leasing motor vehicles, who holds legal title to the motor vehicle as a lessor at the time of seizure and who has no actual knowledge of the revocation of the lessee's drivers license at the time the lease is entered."

PART VI. EFFECTIVE DATE

Section 18. This act shall be implemented with funds available or appropriated to the Department of Transportation and the Administrative Office of the Courts. This act does not obligate the General Assembly to appropriate additional funds.

Section 19. Parts I and II of this act become effective July 1, 2000, and apply to offenses committed on or after that date. The remainder of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:48 p.m. on the 5th day of August, 1999.

S.B. 284

SESSION LAW 1999-407

AN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REVIEW STATE PROCUREMENT CONTRACT AWARDS BY BUSINESS SIZE CATEGORY AND TO REVIEW MEASURES TO ENCOURAGE PARTICIPATION BY SMALL AND MEDIUM-SIZED BUSINESSES IN STATE PROCUREMENT CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-48 reads as rewritten:

"§ 143-48. (See editor's note) State policy; cooperation in promoting the use of ~~small, minority, physically handicapped~~ small contractors, minority contractors, physically handicapped contractors, and women contractors; purpose; required annual reports.

(a) Policy. -- It is the policy of this State to encourage and promote the use of ~~small, minority, physically handicapped~~ small contractors, minority contractors, physically handicapped contractors, and women contractors in State purchasing of goods and services. All State agencies, institutions and political subdivisions shall cooperate with the Department of Administration and all other State agencies, institutions and political subdivisions in efforts to encourage the use of ~~small, minority, physically handicapped~~ small contractors, minority contractors, physically handicapped contractors, and women contractors in achieving the purpose of this Article, which is to provide for the effective and economical acquisition, management and

disposition of goods and services by and through the Department of Administration.

(b) Reporting. -- Every governmental entity required by statute to use the services of the Department of Administration in the purchase of goods and services and every private, nonprofit corporation other than an institution of higher education or a hospital that receives an appropriation of five hundred thousand dollars (\$500,000) or more during a fiscal year from the General Assembly shall report to the department of Administration annually on what percentage of its contract purchases of goods and services, through term contracts and open-market contracts, were from minority-owned businesses, what percentage from female-owned businesses, what percentage from disabled-owned businesses, what percentage from disabled business enterprises and what percentage from nonprofit work centers for the blind and the severely disabled. The same governmental entities shall include in their reports what percentages of the contract bids for such purchases were from such businesses. The Department of Administration shall provide instructions to the reporting entities concerning the manner of reporting and the definitions of the businesses referred to in this act, provided that, for the purposes of this act:

- (1) Except as provided in subdivision (1a) of this section, a business in one of the categories above means one:
 - a. In which at least fifty-one percent (51%) of the business, or of the stock in the case of a corporation, is owned by one or more persons in the category; and
 - b. Of which the management and daily business operations are controlled by one or more persons in the category who own it.
- (1a) A "disabled business enterprise" means a nonprofit entity whose main purpose is to provide ongoing habilitation, rehabilitation, independent living, and competitive employment for persons who are handicapped through supported employment sites or business operated to provide training and employment and competitive wages.
- (1b) A "nonprofit work center for the blind and the severely disabled" means an agency:
 - a. Organized under the laws of the United States or this State, operated in the interest of the blind and the severely disabled, the net income of which agency does not inure in whole or in part to the benefit of any shareholder or other individual;
 - b. In compliance with any applicable health and safety standard prescribed by the United States Secretary of Labor; and
 - c. In the production of all commodities or provision of services, employs during the current fiscal year severely handicapped individuals for (i) a minimum of seventy-five percent (75%) of the hours of direct labor required

for the production of commodities or provision of services, or (ii) in accordance with the percentage of direct labor required under the terms and conditions of Public Law 92-28 (41 U.S.C. § 46, et seq.) for the production of commodities or provision of services, whichever is less.

- (2) A female or a disabled person is not a minority, unless the female or disabled person is also a member of one of the minority groups described in G.S. 143-128(2)a through d.
- (3) A disabled person means a person with a handicapping condition as defined in G.S. 168-1 or G.S. 168A-3.

(c) The Department of Administration shall compile information on small and medium-sized business participation in State contracts subject to this Article and report the information as provided in subsection (d) of this section. The report shall analyze (i) contract awards by business size category, (ii) historical trends in small and medium-sized business participation in these contracts, and (iii) to the extent feasible, participation by small and medium-sized businesses in the State procurement process as dealers, service companies, and other indirect forms of participation. The Department may require reports on contracting by business size in the same manner as reports are required under subsection (b) of this section.

(d) The Department of Administration shall collect and compile the data described in this section and report it annually to the General Assembly.

(e) In seeking contracts with the State, a disabled business enterprise must provide assurances to the Secretary of Administration that the payments that would be received from the State under these contracts are directed to the training and employment of and payment of competitive wages to handicapped employees."

Section 2. The Department of Administration shall study measures to encourage and foster participation by small and medium-sized businesses in State procurement contract awards. The study shall review and consider, among other issues:

- (1) Methods to increase small and medium-sized businesses' knowledge of State procurement opportunities.
- (2) Methods to assist small and medium-sized businesses in bidding on State procurement contracts.
- (3) Submission of bids on State procurement contracts through joint ventures, partnerships, or other lawful means by which small and medium-sized businesses can submit consolidated bids for State procurement contracts.
- (4) Impact of current purchasing policies and procedures on small and medium-sized businesses.

No later than April 15, 2000, the Department shall report its findings and recommendations, including any legislative proposals, to the General Assembly by filing copies of the report with the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Legislative Library.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 9:50 p.m. on the 5th day of August, 1999.

H.B. 328

SESSION LAW 1999-408

AN ACT TO MAKE TECHNICAL CORRECTIONS TO CERTAIN CRIMINAL LAWS AND TO AMEND THE CRIMINAL PENALTIES FOR CERTAIN CRIMINAL LAWS AS RECOMMENDED BY THE NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION AND OTHERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107 reads as rewritten:

"§ 14-107. *Worthless checks.*

(a) It ~~shall be~~ is unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering ~~such the check or draft as aforesaid, draft,~~ that the maker or drawer ~~thereof~~ of it has not sufficient funds on deposit in or credit with ~~such the~~ bank or depository with which to pay the ~~same~~ check or draft upon presentation.

(b) It ~~shall be~~ is unlawful for any person, firm or corporation to solicit or to aid and abet any other person, firm or corporation to draw, make, utter or issue and deliver to any person, firm or corporation, any check or draft on any bank or depository for the payment of money or its equivalent, being informed, knowing or having reasonable grounds for believing at the time of the soliciting or the aiding and abetting that the maker or the drawer of the check or draft has not sufficient funds on deposit in, or credit with, ~~such the~~ bank or depository with which to pay the ~~same~~ check or draft upon presentation.

(c) The word "credit" as used ~~herein shall be construed to mean in this section means~~ an arrangement or understanding with the bank or depository for the payment of ~~any such~~ a check or draft.

(d) A violation of this section ~~shall be~~ is a Class I felony if the amount of the check or draft is more than two thousand dollars (\$2,000). If the amount of the check or draft is two thousand dollars (\$2,000) or less, a violation of this section ~~shall be~~ is a misdemeanor punishable as follows:

- (1) Except as provided in subdivision (3) or (4) of this subsection, If the amount of the check or draft is not over one hundred dollars (\$100.00), the person is guilty of a Class 2 misdemeanor. Provided, however, if such the person has been convicted three times of violating G.S. 14-107, he this section, the person shall on the fourth and all

subsequent convictions (i) be punished as for a Class 1 misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.

~~(2) If the amount of the check or draft is over one hundred dollars (\$100.00), the person is guilty of a Class 2 misdemeanor. Provided, however, if such person has been convicted three times of violating G.S. 14-107, he shall on the fourth and all subsequent convictions (i) be punished in the discretion of the district or superior court as for a Class 1 misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.~~

(3) If the check or draft is drawn upon a nonexistent account, the person is guilty of a Class 1 misdemeanor.

(4) If the check or draft is drawn upon an account that has been closed by the drawer, or that the drawer knows to have been closed by the bank or depository, prior to time the check is drawn, the person is guilty of a Class 1 misdemeanor.

(e) In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with the provisions of G.S. 15A-1343, restitution to the victim for (i) the amount of the check or draft, (ii) any service charges imposed on the payee by a bank or depository for processing the dishonored check, and (iii) any processing fees imposed by the payee pursuant to G.S. 25-3-506, and each prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the defendant."

Section 2. G.S. 14-229 reads as rewritten:

"§ 14-229. *Acting as officer before qualifying as such.*

If any officer shall enter on the duties of his office before he executes and delivers to the authority entitled to receive the same the bonds required by law, and qualifies by taking and subscribing and filing in the proper office the oath of office prescribed, he shall be guilty of a Class 1 misdemeanor and shall be ejected from his office."

Section 3. G.S. 15A-1340.14(b) reads as rewritten:

"(b) Points. -- Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior ~~Class A1 or Class 1 misdemeanor conviction or prior impaired driving conviction under G.S. 20-138.1, conviction as defined in this subsection, 1 point, except that convictions for Class 1 misdemeanor offenses~~

~~under Chapter 20 of the General Statutes, other than conviction for misdemeanor death by vehicle (G.S. 20-141.4(a2)) and conviction for impaired driving in a commercial vehicle (G.S. 20-138.2), shall not be assigned any points for purposes of determining a person's prior record for felony sentencing, point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.~~

- (6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.
- (7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction."

Section 4. G.S. 19A-35 reads as rewritten:

"§ 19A-35. *Penalty for failure to adequately care for animals; disposition of animals.*

Failure of any person licensed or registered under this Article to adequately house, feed, and water animals in his possession or custody shall constitute a Class 3 misdemeanor, and such person shall be subject to a fine of not less than five dollars (\$5.00) per animal or more than a total of one thousand dollars (\$1,000). Such animals shall be subject to seizure and impoundment and upon conviction may be sold or euthanized at the discretion of the Director and such failure shall also constitute grounds for revocation of license after public hearing. ~~The Director is hereby authorized to disburse State funds in such amount as in his discretion is necessary to provide for the welfare of animals until either sold or euthanized and any fine levied in connection with this section shall be applied toward reimbursement of such State funds as the Director shall have expended.~~

Section 5. G.S. 106-418.14 reads as rewritten:

"§ 106-418.14. *Penalties.*

Any person who violates G.S. 106-418.10(1) ~~may be fined not in excess of one hundred dollars (\$100.00) or imprisoned for not in excess of 30 days.~~ is guilty of a Class 3 misdemeanor. For a second

or subsequent violation of G.S. 106-418.10(1), a person ~~may be fined not in excess of five hundred dollars (\$500.00) or imprisoned for not in excess of six months, or both fined and imprisoned.~~ is guilty of a Class 2 misdemeanor."

Section 6. G.S. 106-549.35(a) reads as rewritten:

"(a) Any person, firm, or corporation who violates any provision of this or the previous Article or any regulation of the Board for which no other criminal penalty is provided by this or the previous Article ~~shall upon conviction be subject to imprisonment for not more than six months, or a fine of not more than five hundred dollars (\$500.00), or both such imprisonment and fine;~~ is guilty of a Class 2 misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.15(1)h, such person, firm or corporation ~~shall be subject to imprisonment for not more than three years or is guilty of a Class H felony which may include a fine of not more than ten thousand dollars (\$10,000) or both: (\$10,000).~~ Provided, that no person, firm, or corporation shall be subject to penalties under this section for receiving for transportation any article or animal in violation of this or the previous Article if such receipt was made in good faith, unless such person, firm, or corporation refuses to furnish on request of a representative of the Meat and Poultry Inspection Service the name and address of the person from whom he received such article or animal, and copies of all documents, if any there be, pertaining to the delivery of the article or animal to him."

Section 7. G.S. 106-549.59 reads as rewritten:

"§ 106-549.59. *Punishment for violations; carriers exempt; interference with enforcement.*

(a) Any person who violates the provisions of G.S. 106-549.56, 106-549.57, 106-549.58 or 106-549.61 ~~shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year, or both;~~ is guilty of a Class 1 misdemeanor; but if such violation involves intent to defraud, or any distribution or attempted distribution of an article that is adulterated (except as defined in G.S. 106-549.51(1)h), such person ~~shall be fined~~ is guilty of a Class H felony which may include a fine of not more than ten thousand dollars (\$10,000) or imprisoned not more than three years or both. (\$10,000). When construing or enforcing the provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(b) No carrier shall be subject to the penalties of this Article, other than the penalties for violation of G.S. 106-549.58, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier, of poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession

of facts which would cause a reasonable person to believe that such poultry or poultry products were not inspected or marked in accordance with the provisions of this Article or were otherwise not eligible for transportation under this Article or unless the carrier refuses to furnish on request of a representative of the Department of Agriculture and Consumer Services the name and address of the person from whom he received such poultry or poultry products, and copies of all documents, if any there be, pertaining to the delivery of the poultry or poultry products to such carrier.

(c) Any person who forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this Article ~~shall be fined~~ is guilty of a Class 2 misdemeanor which may include a fine of not more than five thousand dollars (\$5,000) or imprisoned not more than three years, or both. (\$5,000). Whoever, in the commission of any such acts, uses a deadly or dangerous weapon, ~~shall be fined~~ is guilty of a Class A1 misdemeanor which may include a fine of not more than ten thousand dollars (\$10,000) or imprisoned not more than 10 years, or both. (\$10,000)."

Section 8. G.S. 106-549.71 reads as rewritten:

"§ 106-549.71. *Penalty for violation.*

Any person, firm or corporation violating the provisions of this Article ~~shall, upon conviction, be fined or imprisoned in the discretion of the court,~~ is guilty of a Class 1 misdemeanor."

Section 9. G.S. 106-549.88 reads as rewritten:

"§ 106-549.88. *Penalties.*

Any person who violates any provisions of this Article or any regulations thereunder ~~shall, upon conviction thereof, be subject to a fine of not more than five hundred dollars (\$500.00) or imprisonment not to exceed six months, or both fine and imprisonment.~~ is guilty of a Class 2 misdemeanor."

Section 10. G.S. 113-337(b) reads as rewritten:

"(b) Each person convicted of violating the provisions of this Article ~~shall in addition to any other penalty prescribed in the discretion of the court be fined not less than one hundred dollars (\$100.00) upon the first conviction, and not less than five hundred dollars (\$500.00) upon any subsequent conviction.~~ is guilty of a Class 1 misdemeanor."

Section 11. This act becomes effective December 1, 1999, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

Became law upon approval of the Governor at 9:52 p.m. on the 5th day of August, 1999.

H.B. 438

SESSION LAW 1999-409

AN ACT EXEMPTING HOUSING AUTHORITIES FROM REAL ESTATE LICENSURE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-2(c) reads as rewritten:

"(c) The provisions of this Chapter shall not apply to and shall not include:

- (1) Any person, partnership, corporation, limited liability company, association, or other business entity who, as owner or lessor, shall perform any of the acts aforesaid with reference to property owned or leased by them, where the acts are performed in the regular course of or as incident to the management of that property and the investment ~~therein;~~ therein.
- (2) Any person acting as an attorney-in-fact under a duly executed power of attorney from the owner authorizing the final consummation of performance of any contract for the sale, lease or exchange of real ~~estate;~~ estate.
- (3) The acts or services of an ~~attorney-at-law;~~ attorney-at-law.
- (4) Any person, while acting as a receiver, trustee in bankruptcy, guardian, administrator or executor or any person acting under order of any ~~court;~~ court.
- (5) Any person, while acting as a trustee under a trust agreement, deed of trust or will, or his regular salaried ~~employees;~~ employees.
- (6) Any salaried person employed by a licensed real estate broker, for and on behalf of the owner of any real estate or the improvements thereon, which the licensed broker has contracted to manage for the owner, if the salaried employee is limited in his employment to: exhibiting units on the real estate to prospective tenants; providing the prospective tenants with information about the lease of the units; accepting applications for lease of the units; completing and executing preprinted form leases; and accepting security deposits and rental payments for the units only when the deposits and rental payments are made payable to the owner or the broker employed by the owner. The salaried employee shall not negotiate the amount of security deposits or rental payments and shall not negotiate leases or any rental agreements on behalf of the owner or ~~broker;~~ broker.
- (7) Any owner who personally leases or sells his own property.
- (8) Any housing authority organized in accordance with the provisions of Chapter 157 of the General Statutes and any regular salaried employees of the housing authority when performing acts authorized in this Chapter as to any property owned or leased by the housing authority. This exception shall not apply to any person, partnership, corporation, limited liability company, association, or other business entity that contracts with a housing authority to sell or manage property owned or leased by the housing authority."

Section 2. Article 1 of Chapter 157 of the General Statutes is amended to add a new section to read:

"§ 157-26.1. Exemption from real estate licensure requirements.

The authority and the regular salaried employees of the authority shall be exempt from the requirements of Chapter 93A of the General Statutes as provided in G.S. 93A-2(c)(8)."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:54 p.m. on the 5th day of August, 1999.

H.B. 644

SESSION LAW 1999-410

AN ACT TO PROVIDE THAT A PUBLIC CONDEMNOR USING "QUICK TAKE" IN AN EMINENT DOMAIN ACTION SHALL INCLUDE A NOTICE OF OWNER'S RIGHTS IN THE NOTICE OF ACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 40A-40 reads as rewritten:

"§ 40A-40. Notice of action.

(a) Not less than 30 days prior to the filing of a complaint under the provisions of G.S. 40A-41, a public condemnor listed in G.S. 40A-3(b) or (c) shall provide notice to each owner (whose name and address can be ascertained by reasonable diligence) of its intent to institute an action to condemn property. (The notice shall be sent to each owner by certified mail, return receipt requested. The providing of notice shall be complete upon deposit of the notice enclosed in a postpaid, properly addressed wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service. Notice by publication is not required. Notice to an owner whose name and/or address cannot be ascertained by reasonable diligence is not required in any manner.)

The notice shall contain a general description of the property to be taken and of the amount estimated by the condemnor to be just compensation for the property to be condemned. The notice shall also state the purpose for which the property is being condemned and the date condemnor intends to file the complaint.

"(b) In the case of a condemnation action to be commenced pursuant to G.S. 40A-42(a), the notice required by subsection (a) of this section shall substantially comply with the following requirements:

- (1) The notice shall be printed in at least 12 point bold legible type.
- (2) The words 'Notice of condemnation' or similar words shall conspicuously appear on the notice.
- (3) The notice shall include the information required by subsection (a) of this section.
- (4) The notice shall contain a plain language summary of the owner's rights, including:
 - a. The right to commence an action for injunctive relief.

- b. The right to answer the complaint after it has been filed.
 (5) The notice shall include a statement advising the owner to consult with an attorney regarding the owner's rights.

An owner is entitled to no relief because of any defect or inaccuracy in the notice unless the owner was actually prejudiced by the defect or inaccuracy, and the owner is otherwise entitled to relief under Rules 55(d) or 60(b) of the North Carolina Rules of Civil Procedure or other applicable law."

Section 2. This act becomes effective October 1, 1999, and applies to notices of action sent on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:56 p.m. on the 5th day of August, 1999.

H.B. 939

SESSION LAW 1999-411

AN ACT TO INCREASE THE AMOUNT THAT MAY BE IN CONTROVERSY IN SMALL CLAIMS COURT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-210 reads as rewritten:

"§ 7A-210. *Small claim action defined.*

For purposes of this Article a small claim action is a civil action wherein:

- (1) The amount in controversy, computed in accordance with G.S. 7A-243, does not exceed ~~three thousand dollars (\$3,000);~~ four thousand dollars (\$4,000); and
- (2) The only principal relief prayed is monetary, or the recovery of specific personal property, or summary ejectment, or any combination of the foregoing in properly joined claims; and
- (3) The plaintiff has requested assignment to a magistrate in the manner provided in this Article.

The seeking of the ancillary remedy of claim and delivery or an order from the clerk of superior court for the relinquishment of property subject to a lien pursuant to G.S. 44A-4(a) does not prevent an action otherwise qualifying as a small claim under this Article from so qualifying."

Section 2. This act becomes effective October 1, 1999, and applies to claims filed for causes of action arising on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:59 p.m. on the 5th day of August, 1999.

H.B. 1010

SESSION LAW 1999-412

AN ACT TO REGULATE COTTON GINS, COTTON WAREHOUSES, AND COTTON MERCHANTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 38B.

"Cotton Gins, Warehouses, Merchants.

"§ 106-451.40. Definitions.

- (1) "Cotton gin" means any cotton gin.
- (2) "Cotton merchant" means any person who buys cotton from the producer for the purpose of resale, or acts as a broker or agent for the producer in arranging the sale of cotton. It does not include a person who buys cotton for his own use.
- (3) "Cotton warehouse" means any enclosure in which producer-owned cotton is stored or held for longer than 48 hours.

"§ 106-451.41. Registration required.

No person shall engage in business as a cotton gin, cotton warehouse, or cotton merchant without first having registered with the Commissioner of Agriculture. This shall include a cotton marketing cooperative or association that performs any of these functions.

"§ 106-451.42. Application; bond; display of certificate of registration.

(a) A cotton gin, cotton warehouse, cotton merchant, or cotton marketing cooperative or association shall, on or before July 1 of each year, file an application for registration on a form provided by the Commissioner of Agriculture. A fee of twenty-five dollars (\$25.00) shall be submitted with each application.

(b) An application for registration as a cotton warehouse shall also be accompanied by a bond in the amount of three hundred thousand dollars (\$300,000) issued by a company authorized to issue surety bonds in North Carolina and shall be conditioned upon fulfillment of contractual obligations related to the purchase or storage of cotton. A bond shall not be required for a person who is licensed and bonded under the U.S. Warehouse Act.

(c) The registration certificate shall be conspicuously displayed at the place of business.

"§ 106-451.43. Records; receipts; other duties; denial of registration.

(a) Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations shall keep records of producer-owned cotton transactions for seven years, showing the producer's name, bale number, and bale weight.

(b) Cotton gins shall, within 48 hours of ginning, make available to the person from whom cotton was received, a paper document showing the bale number and weight for each bale of cotton ginned.

(c) Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations shall not market, obligate for sale, or otherwise dispose of producer-owned cotton without written consent from the producer.

(d) Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations shall assist the Commissioner of Agriculture or his agents in inspecting records of producer-owned

cotton transactions. Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations shall assist the Commissioner or his agents in weighing or reweighing a representative sample of cotton bales stored or held at their premises, using sampling procedures approved by the Board of Agriculture.

(e) Violation of any of the requirements of this section shall be grounds for denial, suspension, or revocation of registration under G.S. 106-451.41.

"§ 106-451.44. Operation without registration unlawful; injunction.

Engaging in business as a cotton gin, cotton warehouse, or cotton merchant without being registered under G.S. 106-451.41 is punishable as a Class 2 misdemeanor. In addition, the Commissioner of Agriculture may apply to any court of competent jurisdiction to obtain injunctive relief to prevent violations of this act."

Section 2. This act becomes effective January 1, 2000.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 10:01 p.m. on the 5th day of August, 1999.

H.B. 1289

SESSION LAW 1999-413

AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEES, TO SET THE INSURANCE REGULATORY CHARGE, TO IMPOSE THE INSURANCE REGULATORY CHARGE ON SERVICE CORPORATIONS AND ON HEALTH MAINTENANCE ORGANIZATIONS IN THE YEAR 2000, TO ALLOW THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO IMPOSE FEES THAT REFLECT THE ACTUAL COST OF RENDERING THE SERVICE, AND TO LIMIT THE FEE THAT AN APPLICANT MUST PAY FOR A WATER QUALITY CERTIFICATION THAT IS REQUIRED FOR A PERMIT UNDER THE COASTAL AREA MANAGEMENT ACT OF 1974.

The General Assembly of North Carolina enacts:

Section 1. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1999.

Section 2. The annual fee imposed on The North Carolina Electric Membership Corporation under G.S. 62-302(b1), as enacted by House Bill 476, 1999 General Assembly, S.L. 1999-180, for the 1999-2000 fiscal year is two hundred thousand dollars (\$200,000).

Section 3. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is seven percent (7%) for the 1999 calendar year.

Section 4. G.S. 58-6-25 reads as rewritten:

"§ 58-6-25. *Insurance regulatory charge.*

(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. ~~As used in this section, the term "insurance company" means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except a service corporation subject to Article 65 of this Chapter. A health maintenance organization subject to Article 67 of this Chapter is not subject to those taxes and is therefore not subject to the charge levied in this section.~~ The charge levied in this section is in addition to all other fees and taxes. The percentage rate of the charge is established pursuant to subsection (b) of this section. For each insurance company that is not an Article 65 corporation nor a health maintenance organization, the rate is applied to charge shall be at a percentage rate of the company's premium tax liability for the taxable year. For Article 65 corporations and health maintenance organizations, the rate is applied to a presumed premium tax liability for the taxable year calculated as if the corporation or organization were an insurer providing health insurance. In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

- (1) Additional taxes imposed by G.S. 105-228.8.
- (2) The additional local fire and lightning tax imposed by G.S. 105-228.5(d)(4).
- (3) Any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. 97-133(a).
- (4) Any tax credits allowed under Chapter 105 of the General Statutes other than tax payments made by or on behalf of the taxpayer.

(b) Rates. -- ~~The rate of the charge for the 1991 taxable year shall be six and five-tenths percent (6.5%). For subsequent taxable years, the rate each taxable year shall be the percentage rate established by the General Assembly. When the Department prepares its budget request for each upcoming fiscal year, the Department shall propose a percentage rate of the charge levied in this section. The Governor shall submit that proposed rate to the General Assembly each fiscal year. The General Assembly shall set by law the percentage rate of the charge levied in this section. The percentage rate may not exceed the rate necessary to generate funds sufficient to defray the estimated cost of the operations of the Department for each upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed one-third of the estimated cost of operating the Department for each upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Department or a possible unanticipated increase or decrease in North Carolina premiums or other charge revenue.~~

(c) Returns; When Payable. -- The charge levied on each health maintenance organization is payable March 15 following the end of each calendar year. The charge levied on each insurance company

other than a health maintenance organization is payable at the time the insurance company remits its premium tax. If the insurance company is required to remit installment payments of premiums tax under G.S. 105-228.5 for a taxable year, it shall also remit installment payments of the charge levied in this section for that taxable year at the same time and on the same basis as the premium tax installment payments. Each installment payment shall be equal to at least thirty-three and one-third percent (33.3%) of the insurance company's regulatory charge liability incurred in the immediately preceding taxable year.

Every insurance company shall, on or before the date the charge levied in this section is due, file a return on a form prescribed by the Secretary of Revenue. The return shall state the company's total North Carolina premiums or presumed premiums for the taxable year and shall be accompanied by any supporting documentation that the Secretary of Revenue may by rule require.

(d) Use of Proceeds. -- The Insurance Regulatory Fund is created in the State treasury, under the control of the Office of State Budget and Management. The proceeds of the charge levied in this section and all fees collected under Articles 69 through 71 of this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund. The Fund shall be placed in an interest-bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The Fund is subject to the provisions of the Executive Budget Act, except that no unexpended surplus of the Fund shall revert to the General Fund. All money credited to the Fund shall be used to reimburse the General Fund for the following:

- (1) Money appropriated to the Department of Insurance to pay its expenses incurred in regulating the insurance industry and other industries in this State.
- (2) Money appropriated to State agencies to pay the expenses incurred in regulating the insurance industry, in certifying statewide data processors under Article 11A of Chapter 131E of the General Statutes, and in purchasing reports of patient data from statewide data processors certified under that Article.
- (3) Money appropriated to the Department of Revenue to pay the expenses incurred in collecting and administering the taxes on insurance companies levied in Article 8B of Chapter 105 of the General Statutes.

(e) Definitions. -- The following definitions apply in this section:

- (1) Article 65 corporation. -- Defined in G.S. 105-228.3.
- (2) Insurance company. -- A company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8 or a health maintenance organization.
- (3) Insurer. -- Defined in G.S. 105-228.3."

Section 5. G.S. 106-6.1 reads as rewritten:

"§ 106-6.1. ~~Fees not to exceed actual cost. Fees.~~

~~Fees or charges established by any board or commission within the Department of Agriculture and Consumer Services for services rendered or for duties performed shall not exceed the actual cost to the Department of rendering such service or performing such duty. As used herein, "cost" shall mean expenses incurred for mileage, subsistence, postage, computer time, salaries, materials, supplies, or other similar expenses which are incurred as a direct result of rendering the service or performing the duty. As used herein, "cost" shall not include fixed overhead expenses such as buildings, equipment, machinery, or other similar expenses which are indirectly related to a particular service or duty. A board or commission within the Department of Agriculture and Consumer Services may establish fees or charges for the services it provides. The Board of Agriculture, subject to the provisions of Chapter 146 of the General Statutes, may establish a rate schedule for the use of facilities operated by the Department of Agriculture and Consumer Services."~~

Section 6. G.S. 143-215.3D(e) is amended by adding a new subdivision to read:

"(7) Limit Water Quality Certification Fee Required for CAMA Permit. -- An applicant for a permit under Article 7 of Chapter 113A of the General Statutes for which a water quality certification is required shall pay a fee established by the Secretary. The Secretary shall not establish a fee that exceeds the greater of the fee for a permit under Article 7 of Chapter 113A of the General Statutes or the fee for a water quality certification under subdivision (3) or (4) of this subsection."

Section 7. Section 4 of this act becomes effective 1 January 2000, and applies to the insurance regulatory charge levied for the 2000 calendar year. Section 6 of this act becomes effective 1 August 1999. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 10:05 p.m. on the 5th day of August, 1999.

H.B. 1466

SESSION LAW 1999-414

AN ACT TO PROVIDE FOR WITHHOLDING OF NORTH CAROLINA INCOME TAXES FROM TAXABLE PENSIONS, ANNUITIES, AND DEFERRED COMPENSATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.1 is amended by adding two new subdivisions to read:

"(11a) Pension payer. -- A payor or a plan administrator with respect to a pension payment under section 3405 of the Code."

(11b) Pension payment. -- A periodic payment or a nonperiodic distribution that is not an eligible rollover distribution, as defined in section 3405 of the Code."

Section 2. G.S. 105-163.1(14) reads as rewritten:

"(14) Withholding agent. -- An ~~employer~~ employer, a pension payer, or a payer."

Section 3. Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-163.2A. Pension payers must withhold taxes."

(a) Definitions. -- The definitions provided in section 3405 of the Code apply in this section.

(b) Withholding Required. -- A pension payer required to withhold federal taxes under section 3405 of the Code on a pension payment to a resident of this State must deduct and withhold from the payment the State income taxes payable on the payment. Liability for withholding and paying taxes under this section on a pension payment falls on the person who would be liable under section 3405 of the Code for withholding federal taxes on the payment.

Except as otherwise provided in this section, the provisions of this Article apply to a pension payer's pension payment to a resident of this State as if it were an employer's payment of wages to an employee. If a pension payer has more than one arrangement under which it may make pension payments to a resident of this State, each arrangement must be treated separately under this section.

(c) Amount. -- In the case of a periodic payment, the pension payer must withhold the amount that would be required to be withheld under this Article if the payment were a payment of wages by an employer to an employee for the appropriate payroll period. If the recipient of periodic payments fails to file an exemption certificate under G.S. 105-163.5, the pension payer must compute the amount to be withheld as if the recipient were a married individual claiming three withholding exemptions.

In the case of a nonperiodic distribution, the pension payer must withhold taxes equal to four percent (4%) of the nonperiodic distribution.

(d) Election of No Withholding. -- The recipient may elect not to have taxes withheld under this section. The election must be in the form required by the Secretary. In the case of periodic payments, the election remains in effect until revoked by the recipient. In the case of a nonperiodic distribution, the election applies on a distribution-by-distribution basis unless it meets conditions prescribed by the Secretary for it to apply to subsequent nonperiodic distributions by the pension payer.

A pension payer must notify each recipient of the right to elect not to have taxes withheld under this section. The notice must comply with the requirements of section 3405 of the Code and any additional requirements prescribed by the Secretary.

A recipient's election not to have taxes withheld under this section is void if the recipient fails to furnish the recipient's tax identification

number to the pension payer, or the Secretary has notified the pension payer that the tax identification number furnished by the recipient is incorrect.

(e) Exemptions. -- This section does not apply to the following pension payments:

- (1) A pension payment that is wages under this Article.
- (2) Any portion of a pension payment that meets both of the following conditions:
 - a. It is not a distribution or payment from an individual retirement plan as defined in section 7701 of the Code.
 - b. The pension payer reasonably believes it is not taxable to the recipient under Article 4 of this Chapter.
- (3) A distribution described in section 404(k)(2) of the Code, relating to dividends on corporate securities.
- (4) A pension payment that consists only of securities of the recipient's employer corporation plus cash not in excess of two hundred dollars (\$200.00) in lieu of securities of the employer corporation."

Section 4. This act becomes effective January 1, 2001.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 10:08 p.m. on the 5th day of August, 1999.

H.B. 1476

SESSION LAW 1999-415

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EARMARK PART OF THE RESULTING REVENUE GAIN FOR TAX RESEARCH, TO DIRECT THE STATE AUDITOR TO CONDUCT A PERFORMANCE AUDIT OF THE DEPARTMENT OF REVENUE, TO CONFORM TO THE FEDERAL STATUTE OF LIMITATIONS FOR WILLFUL FAILURE TO COMPLY WITH STATE TAX LAWS, AND TO INCREASE THE AMOUNT OF TIME A TAXPAYER HAS TO PROTEST THE PAYMENT OF A TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

"(b) Definitions. -- The following definitions apply in this Article:

- ...
(1a) Code. -- The Internal Revenue Code as enacted as of ~~September 1, 1998~~, June 1, 1999, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-236(8) reads as rewritten:

- "(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and

pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of ~~three~~ six years after the date of the violation."

Section 3. G.S. 105-236(9) reads as rewritten:

"(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of ~~three~~ six years after the date of the violation."

Section 4.(a) The Secretary of Revenue may draw the following amounts from funds generated by Section 1 of this act that would otherwise be credited to the General Fund, to fund four tax analyst positions in the Tax Research Division of the Department of Revenue, effective January 1, 2000, as recommended by the Revenue Laws Study Committee. The four tax analyst positions shall be classified as recommended by the Office of State Personnel:

- (1) One hundred fifty thousand dollars (\$150,000) in the 1999-2000 fiscal year to fund four tax analyst positions in the Tax Research Division of the Department of Revenue.
- (2) Two hundred fifty thousand dollars (\$250,000) in the 2000-2001 fiscal year to continue funding for four tax analysts in the Tax Research Division of the Department of Revenue.

Section 4.(b) The Office of the State Auditor shall conduct a performance audit of the Department of Revenue. The audit shall address the following areas: (i) tax collection and tax auditing activity, with particular attention to the cost, efficiency, and effectiveness of the Integrated Tax Administration System (ITAS) and subsequent automation projects; (ii) current methods of processing tax returns and payments and the ability to employ the latest technology in this processing; (iii) internal organization and management structure; (iv) budgeting and fiscal management; (v) current and future staffing requirements; and (vi) such other issues as may be deemed necessary or desirable by the State Auditor.

The Office of the State Auditor shall submit an interim progress report to the Senate and House Appropriations Subcommittee on General Government and the Fiscal Research Division on or before May 30, 2000, and a final report to the General Assembly by January 1, 2001.

The Secretary of Revenue shall draw one hundred thousand dollars (\$100,000) from funds generated by Section 1 of this act that would otherwise be credited to the General Fund, to defray costs associated with the performance audit required by this subsection. The funds shall be remitted to the Office of the State Auditor in the 1999-2000 fiscal year for costs associated with this performance audit.

Section 5. G.S. 105-267 reads as rewritten:

"§ 105-267. Taxes to be paid; suits for recovery of taxes.

No court of this State shall entertain a suit of any kind brought for the purpose of preventing the collection of any tax imposed in this Subchapter. Whenever a person has a valid defense to the enforcement of the collection of a tax, the person shall pay the tax to the proper officer, and that payment shall be without prejudice to any defense of rights the person may have regarding the tax. At any time within the applicable protest period, the taxpayer may demand a refund of the tax paid in writing from the Secretary and if the tax is not refunded within 90 days thereafter, may sue the Secretary in the courts of the State for the amount demanded. The protest period for a tax levied in Article 2A, 2C, or 2D of this Chapter is 30 days after payment. The protest period for all other taxes is ~~one year~~ three years after payment.

The suit may be brought in the Superior Court of Wake County, or in the county in which the taxpayer resides at any time within three years after the expiration of the 90-day period allowed for making the refund. If upon the trial it is determined that all or part of the tax was levied or assessed for an illegal or unauthorized purpose, or was for any reason invalid or excessive, judgment shall be rendered therefor, with interest, and the judgment shall be collected as in other cases. The amount of taxes for which judgment is rendered in such an action shall be refunded by the State. G.S. 105-241.2 provides an alternate procedure for a taxpayer to contest a tax and is not in conflict with or superseded by this section."

Section 6. Sections 2 and 3 of this act become effective December 1, 1999, and apply to prosecutions brought on or after that date for cases where the three-year statute of limitations had not expired prior to December 1, 1999. Section 5 of this act is effective for taxes paid on or after January 1, 1999. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 10:09 p.m. on the 5th day of August, 1999.

H.B. 885

SESSION LAW 1999-416

AN ACT TO PROTECT CONSUMERS BY REQUIRING CONTRACTS FOR THE RENTAL OF SELF-SERVICE STORAGE TO CLEARLY STATE CERTAIN TERMS REGARDING THE IMPOSITION OF LATE FEES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 35.

"Self-Service Storage Rental Contracts.

"§ 66-280. Contract requirements.

A rental contract for the storage of personal property in a self-service storage business shall state, in bold type of a minimum size of 14 points and conspicuously placed, the terms regarding the imposition of late fees, the terms regarding any consequences of a late payment, and the terms, if any, that pertain to the payment of court costs, attorneys' fees, and any other costs associated with the payment of late fees or with judgment against the consumer for late rental payments or late fees.

"§ 66-281. Late fees.

(a) In all rental contracts in which a definite time for the payment of the rent is fixed, the late fee for each rental unit shall not exceed fifteen percent (15%) of the rental payment and shall not be imposed by the self-service storage business until the rental payment for that rental unit is five days or more late.

(b) A late fee under this section may be imposed only one time for each late rental payment. A late fee for a specific late rental payment shall not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default.

"§ 66-282. Violations.

(a) Late fees and attorney fees are not recoverable if a self-service storage business violates the provisions of G.S. 66-281.

(b) Any waiver of any of the provisions of this Article shall be deemed void and unenforceable.

(c) The remedies provided in this section are in addition to any other remedies provided for by law or in equity."

Section 2. This act becomes effective October 1, 1999, and applies to rental contracts for self-service storage entered into on or after that date.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:12 p.m. on the 5th day of August, 1999.

S.B. 283

SESSION LAW 1999-417

AN ACT TO IMPLEMENT TECHNOLOGICAL IMPROVEMENTS
IN THE WAY PURCHASING OPPORTUNITIES ARE
ADVERTISED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-345.8 reads as rewritten:

"§ 143-345.8. North Carolina Purchase Directory.

The Division of Purchase and Contract of the Department of Administration shall ~~publish a tabloid size, biweekly publication to be known as the "North Carolina Purchase Directory" which shall contain electronically advertise information on contract and purchase requirements from the Division of Purchase and Contract, the Office of State Construction, the Department of Transportation, and other agencies of State government which make direct purchases from private suppliers. The Division shall mail four free issues of this publication to all persons and businesses on the current bidders roster, to all Chambers of Commerce in North Carolina, to all business associations in North Carolina and to all persons or businesses on a list to be supplied by the Department of Commerce, within 30 days after the effective date of this section; thereafter the Division shall make the publication available on a subscription basis. Said subscription price shall not exceed forty dollars (\$40.00) per year and shall be computed taking into consideration the cost of producing and mailing the publication.~~ The Division shall coordinate with the other departments of State government to ensure that the publication electronic advertisement is meeting the goals of disseminating as widely as possible and in a timely manner information on those State contracts which are open for bids. A printed copy of any information that is electronically advertised shall be made available to any party upon request. The Secretary of the Department of Administration may adopt rules governing the routine and procedures to be followed in advertising information on contract and purchase opportunities, what contracts and purchases will be advertised, and under what conditions exceptions to the electronic advertisement may occur."

Section 2. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Secretary of the Department of Administration may adopt temporary rules to implement the provisions of this act. Under rules to be adopted by the Secretary, the Division may advertise information regarding contract and purchase requirements in both print and electronic format for a period of 12 months following the effective date of this act.

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:17 p.m. on the 5th day of August, 1999.

S.B. 877

SESSION LAW 1999-418

AN ACT TO CLARIFY WHEN MEMBERS OF THE NORTH CAROLINA NATIONAL GUARD AND NORTH CAROLINA STATE GUARD ARE EMPLOYEES SUBJECT TO THE WORKERS' COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-2(2) reads as rewritten:

- "(2) Employee. -- The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national guard, ~~except when called into the service of the United States, guard while on State active duty under orders of the Governor and members of the North Carolina State guard, and members of these organizations shall be entitled to compensation for injuries arising out of and in the course of the performance of their duties at drill, in camp, or on special duty guard while on State active duty~~ under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee as herein defined of a municipality, county, or of the State of North Carolina while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or

activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation specifically excluding such executive officer in such contract of insurance and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term employee shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State approved mission pursuant to Article 11 of Chapter 143B.

Employee shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be

subject to employee responsibilities prescribed in this Article."

Section 2. This act is effective when it becomes law and applies to claims for injuries or deaths occurring on or after that date.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:21 p.m. on the 5th day of August, 1999.

H.B. 660

SESSION LAW 1999-419

AN ACT TO CLARIFY THE DEFINITION OF COLLECTION AGENCY SO THAT THE IV-D CHILD ENFORCEMENT PROGRAM IS REGULATED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-70-15 reads as rewritten:

"§ 58-70-15. *Definition of collection agency and collection agency business.*

"Collection agency" means and includes all persons, firms, corporations, and associations directly or indirectly engaged in soliciting, from more than one person, firm, corporation or association, delinquent claims of any kind owed or due or asserted to be owed or due the solicited person, firm, corporation or association, and all persons, firms, corporations and associations directly or indirectly engaged in the asserting, enforcing or prosecuting of those claims.

"Collection agency" shall include:

- (1) Any person, firm, corporation or association who shall procure a listing of delinquent debtors from any creditor and who shall sell such listing or otherwise receive any fee or benefit from collections made on such listing; and
- (2) Any person, firm, corporation or association which attempts to or does transfer or sell to any person, firm, corporation or association not holding the permit prescribed by this Article any system or series of letters or forms for use in the collection of delinquent accounts or claims which by direct assertion or by implication indicate that the claim or account is being asserted or collected by any person, firm, corporation, or association other than the creditor or owner of the claim or demand; and
- (3) An in-house collection agency, whereby a person, firm, corporation, or association sets up a collection service for his or its own business and the agency has a name other than that of the business.

"Collection agency" does not mean or include:

- (1) Regular employees of a single creditor;

- (2) Banks, trust companies, or bank-owned, controlled or related firms, corporations or associations engaged in accounting, bookkeeping or data processing services where a primary component of such services is the rendering of statements of accounts and bookkeeping services for creditors;
- (3) Mortgage banking companies;
- (4) Savings and loan associations;
- (5) Building and loan associations;
- (6) Duly licensed real estate brokers and agents when the claims or accounts being handled by the broker or agent are related to or are in connection with the broker's or agent's regular real estate business;
- (7) Express, telephone and telegraph companies subject to public regulation and supervision;
- (8) Attorneys-at-law handling claims and collections in their own name and not operating a collection agency under the management of a layman;
- (9) Any person, firm, corporation or association handling claims, accounts or collections under an order or orders of any court;
- (10) A person, firm, corporation or association which, for valuable consideration purchases accounts, claims, or demands of another, which such accounts, claims, or demands of another are not delinquent at the time of such purchase, and then, in its own name, proceeds to assert or collect the accounts, claims or demands;
- (11) "Collection agency" shall not include any person, firm, corporation or association attempting to collect or collecting claims, in his or its own name, of a business or businesses owned wholly or substantially by the same person, firm, corporation, or association;
- (12) Any nonprofit tax exempt corporation organized for the purpose of providing mediation or other dispute resolution ~~services~~ services; and
- (13) The designated representatives of programs as defined by G.S. 110-129(5)."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:23 p.m. on the 5th day of August, 1999.

S.B. 974

SESSION LAW 1999-420

AN ACT REGULATING THE RENTAL OF RESIDENTIAL PROPERTY FOR VACATION, LEISURE, OR RECREATIONAL PURPOSES, AND CLARIFYING THE RIGHTS AND

OBLIGATIONS OF LANDLORDS AND TENANTS OF
RESIDENTIAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 42A.
"Vacation Rental Act.
"ARTICLE 1.
"Vacation Rentals.

"§ 42A-1. Title.

This Chapter shall be known as the North Carolina Vacation Rental Act.

"§ 42A-2. Purpose and scope of act.

The General Assembly finds that the growth of the tourism industry in North Carolina has led to a greatly expanded market of privately owned residences that are rented to tourists for vacation, leisure, and recreational purposes. Rental transactions conducted by the owners of these residences or licensed real estate brokers acting on their behalf present unique situations not normally found in the rental of primary residences for long terms, and therefore make it necessary for the General Assembly to enact laws regulating the competing interests of landlords, real estate brokers, and tenants.

"§ 42A-3. Application; exemptions.

(a) The provisions of this Chapter shall apply to any person, partnership, corporation, limited liability company, association, or other business entity who acts as a landlord or real estate broker engaged in the rental or management of residential property for vacation rental as defined in this Chapter.

(b) The provisions of this Chapter shall not apply to:

- (1) Lodging provided by hotels, motels, tourist camps, and other places subject to regulation under Chapter 72 of the General Statutes.
- (2) Rentals to persons temporarily renting a dwelling unit when traveling away from their primary residence for business or employment purposes.
- (3) Rentals to persons having no other place of primary residence.
- (4) Rentals for which no more than nominal consideration is given.

"§ 42A-4. Definitions.

The following definitions apply in this Chapter:

- (1) Real estate broker. -- A real estate broker as defined in G.S. 93A-2(a).
- (2) Residential property. -- An apartment, condominium, single-family home, townhouse, cottage, or other property that is devoted to residential use or occupancy by one or more persons for a definite or indefinite period.

- (3) Vacation rental. -- The rental of residential property for vacation, leisure, or recreation purposes for fewer than 90 days by a person who has a place of permanent residence to which he or she intends to return.
- (4) Vacation rental agreement. -- A written agreement between a landlord or his or her real estate broker and a tenant in which the tenant agrees to rent residential property belonging to the landlord for a vacation rental.

"ARTICLE 2.

"Vacation Rental Agreements.

"§ 42A-10. Written agreement required.

(a) A landlord or real estate broker and tenant shall execute a vacation rental agreement for all vacation rentals subject to the provisions of this Chapter. No vacation rental agreement shall be valid and enforceable unless the tenant has accepted the agreement as evidenced by one of the following:

- (1) The tenant's signature on the agreement.
- (2) The tenant's payment of any monies to the landlord or real estate broker after the tenant's receipt of the agreement.
- (3) The tenant's taking possession of the property after the tenant's receipt of the agreement.

(b) Any real estate broker who executes a vacation rental agreement that does not conform to the provisions of this Chapter or fails to execute a vacation rental agreement shall be guilty of an unfair trade practice in violation of G.S. 75-1.1, and shall be prohibited from commencing an expedited eviction proceeding as provided in Article 4 of this Chapter.

"§ 42A-11. Vacation rental agreements.

(a) A vacation rental agreement executed under this Chapter shall contain the following notice on its face which shall be set forth in a clear and conspicuous manner that distinguishes it from other provisions of the agreement: 'THIS IS A VACATION RENTAL AGREEMENT UNDER THE NORTH CAROLINA VACATION RENTAL ACT. THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THIS AGREEMENT ARE DEFINED BY LAW AND INCLUDE UNIQUE PROVISIONS PERMITTING THE DISBURSEMENT OF RENT PRIOR TO TENANCY AND EXPEDITED EVICTION OF TENANTS. YOUR SIGNATURE ON THIS AGREEMENT, OR PAYMENT OF MONEY OR TAKING POSSESSION OF THE PROPERTY AFTER RECEIPT OF THE AGREEMENT, IS EVIDENCE OF YOUR ACCEPTANCE OF THE AGREEMENT AND YOUR INTENT TO USE THIS PROPERTY FOR A VACATION RENTAL.'

(b) The vacation rental agreement shall contain provisions separate from the requirements of subsection (a) of this section which shall describe the following as permitted or required by this Chapter:

- (1) The manner in which funds shall be received, deposited, and disbursed in advance of the tenant's occupancy of the property.

- (2) Any processing fees permitted under G.S. 42A-17(c).
- (3) The rights and obligations of the landlord and tenant under G.S. 42A-17(b).
- (4) The applicability of expedited eviction procedures.
- (5) The rights and obligations of the landlord or real estate broker and the tenant upon the transfer of the property.
- (6) The rights and obligations of the landlord or real estate broker and the tenant under G.S. 42A-36.
- (7) Any other obligations of the landlord and tenant.

"ARTICLE 3.

"Handling and Accounting of Funds.

"§ 42A-15. Trust account uses.

A landlord or real estate broker may require a tenant to pay all or part of any required rent, security deposit, or other fees permitted by law in advance of the commencement of a tenancy under this Chapter if these payments are expressly authorized in the vacation rental agreement. If the tenant is required to make any advance payments, other than a security deposit, whether the payment is denominated as rent or otherwise, the landlord or real estate broker shall deposit these payments in a trust account in an insured bank or savings and loan association in North Carolina no later than three banking days after the receipt of the these payments. These payments deposited in a trust account shall not earn interest unless the landlord and tenant agree in the vacation rental agreement that the payments may be deposited in an interest-bearing account. The landlord and tenant shall also provide in the agreement to whom the accrued interest shall be disbursed.

"§ 42A-16. Advance payments uses.

(a) A landlord or real estate broker shall not disburse prior to the occupancy of the property by the tenant an amount greater than fifty percent (50%) of the total rent except as permitted pursuant to this subsection. A landlord or real estate broker may disburse prior to the occupancy of the property by the tenant any fees owed to third parties to pay for goods, services, or benefits procured by the landlord or real estate broker for the benefit of the tenant, including administrative fees permitted by G.S. 42A-17(c), if the disbursement is expressly authorized in the vacation rental agreement. The funds remaining after any disbursement permitted under this subsection shall remain in the trust account and may not be disbursed until the occurrence of one of the following:

- (1) The commencement of the tenancy, at which time the remaining funds may be disbursed in accordance with the terms of the agreement.
- (2) The tenant commits a material breach, at which time the landlord may retain an amount sufficient to defray the actual damages suffered by the landlord as a result of the breach.
- (3) The landlord or real estate broker refunds the money to the tenant.

- (4) The funds in the trust account are transferred in accordance with G.S. 42A-19(b) upon the termination of the landlord's interest in the property.

(b) Funds collected for sales or occupancy taxes and tenant security deposits shall not be disbursed from the trust account prior to termination of the tenancy or material breach of the agreement by the tenant, except as a refund to the tenant.

(c) The tenant's execution of a vacation rental agreement in which he or she agrees to the advance disbursement of payments shall not constitute a waiver or loss of any of the tenant's rights to reimbursement of such payments if the tenant is lawfully entitled to reimbursement.

"§ 42A-17. Accounting; reimbursement.

(a) A vacation rental agreement shall identify the name and address of the bank or savings and loan association in which the tenant's security deposit and other advance payments are held in a trust account, and the landlord and real estate broker shall provide the tenant with an accounting of such deposit and payments if the tenant makes a reasonable request for an accounting prior to the tenant's occupancy of the property.

(b) Except as otherwise provided in this subsection, if, at the time the tenant is to begin occupancy of the property, the landlord or real estate broker cannot provide the property in a fit and habitable condition or substitute a reasonably comparable property in such condition, the landlord and real estate broker shall refund to the tenant all payments made by the tenant.

(c) A vacation rental agreement may include administrative fees, the amounts of which shall be provided in the agreement, reasonably calculated to cover the costs of processing the tenant's reservation, transfer, or cancellation of a vacation rental.

"§ 42A-18. Applicability of the Residential Tenant Security Deposit Act.

(a) Except as may otherwise be provided in this Chapter, all funds collected from a tenant and not identified in the vacation rental agreement as occupancy or sales taxes, fees, or rent payments shall be considered a tenant security deposit and shall be subject to the provisions of the Residential Tenant Security Deposit Act, as codified in Article 6 of Chapter 42 of the General Statutes. Funds collected as a tenant security deposit in connection with a vacation rental shall be deposited into a trust account as required by G.S. 42-50. The landlord or real estate broker shall not have the option of obtaining a bond in lieu of maintaining security deposit funds in a trust account. In addition to the permitted uses of tenant security deposit monies as provided in G.S. 42-51, a landlord or real estate broker may, after the termination of a tenancy under this Chapter, deduct from any tenant security deposit the amount of any long distance or per call telephone charges and cable television charges that are the obligation of the tenant under the vacation rental agreement and are left unpaid by the tenant at the conclusion of the tenancy. The landlord or real estate broker shall apply, account for, or refund tenant security deposit

monies as provided in G.S. 42-51 within 45 days following the conclusion of the tenancy.

(b) A vacation rental agreement shall not contain language compelling or permitting the automatic forfeiture of all or part of a tenant security deposit in case of breach of contract by the tenant, and no such forfeiture shall be allowed. The vacation rental agreement shall provide that a tenant security deposit may be applied to actual damages caused by the tenant as permitted under Article 6 of Chapter 42 of the General Statutes.

"§ 42A-19. Transfer of property subject to a vacation rental agreement.

(a) The grantee of residential property voluntarily transferred by a landlord who has entered into a vacation rental agreement for the use of the property shall take his or her title subject to the vacation rental agreement if the vacation rental is to end not later than 180 days after the grantee's interest in the property is recorded in the office of the register of deeds. If the vacation rental is to end more than 180 days after the recording of the grantee's interest, the tenant shall have no right to enforce the terms of the agreement unless the grantee has agreed in writing to honor such terms, but the tenant shall be entitled to a refund of any payments made by him or her. Prior to entering into any contract of sale, the landlord shall disclose to the grantee the time periods that the property is subject to a vacation rental agreement. Not later than 10 days after entering into the contract of sale the landlord shall disclose to the grantee each tenant's name and address and shall provide the grantee with a copy of each vacation rental agreement. Not later than 10 days after transfer of the property, the grantee or the grantee's agent shall:

- (1) Notify each tenant in writing of the property transfer, the grantee's name and address, and the date the grantee's interest was recorded.
- (2) Advise each tenant whether he or she has the right to occupy the property subject to the terms of the vacation rental agreement and the provisions of this section.
- (3) Advise each tenant of whether he or she has the right to receive a refund of any payments made by him or her.

(b) Except as otherwise provided in this subsection, upon termination of the landlord's interest in the residential property subject to a vacation rental agreement, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent, or the real estate broker, shall, within 30 days, transfer all advance rent paid by the tenant, and the portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the landlord's successor in interest and thereafter notify the tenant by mail of such transfer and of the transferee's name and address. For vacation rentals that end more than 180 days after the recording of the interest of the landlord's successor in interest, unless the landlord's successor in interest has agreed in writing to honor the vacation rental agreement, the landlord or the landlord's agent, or the real estate broker, shall, within 30 days, transfer all advance rent paid by the

tenant, and the portion of any fees remaining after any lawful deductions made under G.S. 42A-16, to the tenant. Compliance with this subsection shall relieve the landlord or real estate broker of further liability with respect to any payment of rent or fees. Funds held as a security deposit shall be disbursed in accordance with G.S. 42A-18.

(c) If, prior to the tenant's occupancy of the property, the landlord's interest in the property is involuntarily transferred to another, the landlord shall refund to the tenant within 60 days after the transfer any payments made by the tenant.

(d) The failure of a landlord to comply with the provisions of this section shall constitute an unfair trade practice in violation of G.S. 75-1.1. A landlord who complies with the requirements of this section shall have no further obligations to the tenant.

"ARTICLE 4.

"Expedited Eviction Proceedings.

"§ 42A-23. Grounds for eviction.

(a) Any tenant who leases residential property subject to a vacation rental agreement under this Chapter for 30 days or less may be evicted and removed from the property in an expedited eviction proceeding brought by the landlord, or real estate broker as agent for the landlord, as provided in this Article if the tenant does one of the following:

- (1) Holds over possession after his or her tenancy has expired.
- (2) Has committed a material breach of the terms of the vacation rental agreement that, according to the terms of the agreement, results in the termination of his or her tenancy.
- (3) Fails to pay rent as required by the agreement.
- (4) Has obtained possession of the property by fraud or misrepresentation.

(b) Only the right to possession shall be relevant in an expedited eviction proceeding. All other issues related to the rental of the residential property shall be presented in a separate civil action.

"§ 42A-24. Expedited eviction.

(a) Before commencing an expedited eviction proceeding, the landlord or real estate broker shall give the tenant at least four hours' notice, either orally or in writing, to quit the premises. If reasonable efforts to personally give oral or written notice have failed, written notice may be given by posting the notice on the front door of the property.

(b) An expedited eviction proceeding shall commence with the filing of a complaint and issuance of summons in the county where the property is located. If the office of the clerk of superior court is closed, the complaint shall be filed with, and the summons issued by, a magistrate. The service of the summons and complaint for expedited eviction shall be made by a sworn law enforcement officer on the tenant personally or by posting a copy of the summons and complaint on the front door of the property. The officer, upon service, shall promptly file a return therefor. A hearing on the expedited eviction

shall be held before a magistrate in the county where the property is located not sooner than 12 hours after service upon the tenant and no later than 48 hours after such service. To the extent that the provisions of this Article are in conflict with the Rules of Civil Procedure, Chapter 1A of the General Statutes, with respect to the commencement of an action or service of process, this Article controls.

(c) The complaint for expedited eviction shall allege and the landlord or real estate broker shall prove the following at the hearing:

- (1) The vacation rental is for a term of 30 days or less.
- (2) The tenant entered into and accepted a vacation rental agreement that conforms to the provisions of this Chapter.
- (3) The tenant committed one or more of the acts listed in G.S. 42A-23(a) as grounds for eviction.
- (4) The landlord or real estate broker has given notice to the tenant to vacate as a result of the breach as provided in subsection (a) of this section.

The rules of evidence shall not apply in an expedited eviction proceeding, and the court shall allow any reasonably reliable and material statements, documents, or other exhibits to be admitted as evidence. The provisions of G.S. 7A-218, 7A-219, and 7A-220, except any provisions regarding amount in controversy, shall apply to an expedited eviction proceeding held before the magistrate. These provisions shall not be construed to broaden the scope of an expedited eviction proceeding to issues other than the right to possession.

(d) If the court finds for the landlord or real estate broker, the court shall immediately enter a written order granting the landlord or real estate broker possession and stating the time when the tenant shall vacate the property. In no case shall this time be less than 2 hours or more than 8 hours after service of the order on the tenant. The court's order shall be served on the tenant at the hearing. If the tenant does not appear at the hearing or leaves before the order is served, the order shall be served by delivering the order to the tenant or by posting the order on the front door of the property by any sworn law enforcement officer. The officer, upon service, shall file a return therefor.

If the court finds for the landlord or real estate broker, the court shall determine the amount of the appeal bond that the tenant shall be required to post should the tenant seek to appeal the court order. The amount of the bond shall be an estimate of the rent that will become due while the tenant is prosecuting the appeal and reasonable damages that the landlord may suffer, including damage to property and damages arising from the inability of the landlord or real estate broker to honor other vacation rental agreements due to the tenant's possession of the property.

"§ 42A-25. Appeal.

A tenant or landlord may appeal a court order issued pursuant to G.S. 42A-24(d) to district court for a trial de novo. A tenant may petition the district court to stay the eviction order and shall post a

cash or secured bond with the court in the amount determined by the court pursuant to G.S. 42A-24(d).

"§ 42A-26. Violation of court order.

If a tenant fails to remove personal property from a residential property subject to a vacation rental after the court has entered an order of eviction, the landlord or real estate broker shall have the same rights as provided in G.S. 42-36.2(b) as if the sheriff had not removed the tenant's property. The failure of a tenant or the guest of a tenant to vacate a residential property in accordance with a court order issued pursuant to G.S. 42A-24(d) shall constitute a criminal trespass under G.S. 14-159.13.

"§ 42A-27. Penalties for abuse.

A landlord or real estate broker shall undertake to evict a tenant pursuant to an expedited eviction proceeding only when he or she has a good faith belief that grounds for eviction exists under the provisions of this Chapter. Otherwise, the landlord or real estate broker shall be guilty of an unfair trade practice under G.S. 75-1.1 and a Class 1 misdemeanor.

"ARTICLE 5.

"Landlord and Tenant Duties.

"§ 42A-31. Landlord to provide fit premises.

A landlord of a residential property used for a vacation rental shall:

- (1) Comply with all current applicable building and housing codes.
- (2) Make all repairs and do whatever is reasonably necessary to put and keep the property in a fit and habitable condition.
- (3) Keep all common areas of the property in safe condition.
- (4) Maintain in good and safe working order and reasonably and promptly repair all electrical, plumbing, sanitary, heating, ventilating, and other facilities and major appliances supplied by him or her upon written notification from the tenant that repairs are needed.
- (5) Provide operable smoke detectors. The landlord shall replace or repair the smoke detectors if the landlord is notified by the tenant in writing that replacement or repair is needed. The landlord shall annually place new batteries in a battery-operated smoke detector, and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered negligence on the part of the tenant or landlord.

These duties shall not be waived; however, the landlord and tenant may make additional covenants not inconsistent herewith in the vacation rental agreement.

"§ 42A-32. Tenant to maintain dwelling unit.

The tenant of a residential property used for a vacation rental shall:

- (1) Keep that part of the property which he or she occupies and uses as clean and safe as the conditions of the property permit and cause no unsafe or unsanitary conditions in the

- common areas and remainder of the property that he or she uses.
- (2) Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner.
 - (3) Keep all plumbing fixtures in the property or used by the tenant as clean as their condition permits.
 - (4) Not deliberately or negligently destroy, deface, damage, or remove any part of the property or render inoperable the smoke detector provided by the landlord or knowingly permit any person to do so.
 - (5) Comply with all obligations imposed upon the tenant by current applicable building and housing codes.
 - (6) Be responsible for all damage, defacement, or removal of any property inside the property that is in his or her exclusive control unless the damage, defacement, or removal was due to ordinary wear and tear, acts of the landlord or his or her agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces.
 - (7) Notify the landlord of the need for replacement of or repairs to a smoke detector. The landlord shall annually place new batteries in a battery-operated smoke detector, and the tenant shall replace the batteries as needed during the tenancy. Failure of the tenant to replace the batteries as needed shall not be considered negligence on the part of the tenant or the landlord.

These duties shall not be waived; however, the landlord and tenant may make additional covenants not inconsistent herewith in the vacation rental agreement.

"ARTICLE 6.

"General Provisions.

"§ 42A-36. Mandatory evacuations.

If State or local authorities, acting pursuant to Article 36A of Chapter 14 or Article 1 of Chapter 166A of the General Statutes, order a mandatory evacuation of an area that includes the residential property subject to a vacation rental, the tenant in possession of the property shall comply with the evacuation order. Upon compliance, the tenant shall be entitled to a refund from the landlord of the prorated rent for each night that the tenant is unable to occupy the property because of the mandatory evacuation order. The tenant shall not be entitled to a refund if: (i) prior to the tenant taking possession of the property, the tenant refused insurance offered by the landlord or real estate broker that would have compensated him or her for losses or damages resulting from loss of use of the property due to a mandatory evacuation order; or (ii) the tenant purchased insurance offered by the landlord or real estate broker. The insurance offered shall be provided by an insurance company duly authorized by the North Carolina Department of Insurance, and the cost of the

insurance shall not exceed eight percent (8%) of the total rent charged for the vacation rental to the tenant."

Section 2. G.S. 42-40(2) reads as rewritten:

"(2) "Premises" means a dwelling unit, including mobile homes or mobile home spaces, and the structure of which it is a part and facilities and appurtenances therein and grounds, areas, and facilities normally held out for the use of residential ~~tenants who are using the dwelling unit as their primary residence.~~ tenants."

Section 3. G.S. 42-39 is amended by adding a new subsection to read:

"(a1) The provisions of this Article shall not apply to vacation rentals entered into under Chapter 42A of the General Statutes."

Section 4. G.S. 7A-272 reads as rewritten:

"§ 7A-292. *Additional powers of magistrates.*

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

- (1) To administer oaths;
- (2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;
- (3) When authorized by the chief district judge, to take depositions and examinations before trial;
- (4) To issue subpoenas and capiases valid throughout the county;
- (5) To take affidavits for the verification of pleadings;
- (6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;
- (7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;
- (8) To take acknowledgments of instruments, as provided in G.S. 47-1;
- (9) To perform the marriage ceremony, as provided in G.S. 51-1;
- (10) To take acknowledgment of a written contract or separation agreement between husband and wife; and
- (11) Repealed by Session Laws 1973, c. 503, s. 9.
- (12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
- (13) Repealed by Session Laws 1973, c. 503, s. 9.
- (14) If the office the clerk of superior court is closed, to accept the filing of a complaint and to issue a summons in cases for expedited eviction proceedings under Article 4 of Chapter 42A of the General Statutes."

Section 5. This act becomes effective January 1, 2000, and applies to rental agreements entered into on or after that date.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:29 p.m. on the 5th day of August, 1999.

H.B. 278

SESSION LAW 1999-421

AN ACT AMENDING THE EMPLOYMENT SECURITY LAWS TO PROVIDE THAT THE ONE HUNDRED-DAY NONCHARGE PERIOD EXTENDS TO CERTAIN RECIPIENTS OF THE STATE'S WORK FIRST PROGRAM SEPARATED FOR A BONA FIDE INABILITY TO WORK.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(c)(2)b., as rewritten by S.L. 1999-196, reads as rewritten:

- "b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant was hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the Commission may by regulation prescribe and only to the extent of the wages paid during such probationary employment; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); (vi) separation due to leaving for disability or health condition; or (vii) separation of claimant solely as the result of an undue family ~~hardship~~ hardship; or (viii) separation of claimant solely for a bona fide inability to do the work for which the claimant was hired, but only where the claimant in the last calendar quarter preceding the quarter in which the claimant was paid wages by the employer was a recipient of Work First Program assistance by an agency of the State and the claimant's period of employment was 100 days or less, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the

Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, et seq.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c)."

Section 2. This act becomes effective August 1, 1999, and applies to unemployment insurance claims filed on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 10:30 p.m. on the 5th day of August, 1999.

S.B. 233

SESSION LAW 1999-422

AN ACT TO PROVIDE FOR THE TRANSMISSION AND FILING OF RIGHT-OF-WAY PLANS BY THE DEPARTMENT OF TRANSPORTATION AND TO PROVIDE THAT ANY FUNDS ALLOCATED IN A SPECIFIC YEAR TO A TRANSPORTATION DIVISION AND UNDER OR OVER OBLIGATED SHALL BE ADDED TO THE NEXT YEAR'S ALLOCATION TO THE TRANSPORTATION DIVISION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-19.4 reads as rewritten:

"§ 136-19.4. Registration of right-of-way plans.

(a) A copy of the cover sheet and plan and profile sheets of the final right-of-way plans for all Department of Transportation projects, on those projects for which plans are prepared, under which right-of-way or other interest in real property is acquired or access is controlled shall be certified by the Department of Transportation to the register of deeds of the county or counties within which the project is located. The Department shall certify said plan sheets to the register of deeds within two weeks from their formal approval by the Board of Transportation.

(b) The copy of the plans certified to the register of deeds shall consist of a Xerox, photographic, or other permanent copy copy, except for plans electronically transmitted pursuant to subsection (b1) of this section, and shall measure approximately 20 inches by 12 inches ~~17 inches by 11 inches~~ including no less than one and one-half inches binding space on the left-hand side.

(b1) With the approval of the county in which the right-of-way plans are to be filed, the Department may transmit the plans electronically.

(c) Notwithstanding any other provision in the law, upon receipt of said original certified copy of the right-of-way plans, the register of deeds shall record said right-of-way plans and place the same in a book maintained for that purpose, and the register of deeds shall maintain a cross-index to said right-of-way plans by number of road affected, if any, and by project identification number. No probate before the clerk of the superior court shall be required.

(d) If after the approval of said final right-of-way plans the Board of Transportation shall by resolution alter or amend said right-of-way or control of access, the Department of Transportation, within two weeks from the adoption by the Board of Transportation of said alteration or amendment, shall certify to the register of deeds in the county or counties within which the project is located a copy of the amended plan and profile sheets approved by the Board of Transportation and the register of deeds shall remove the original plan sheets and record the amended plan sheets in lieu thereof.

(e) The register of deeds in each county shall collect a fee from the Department of Transportation of five dollars (\$5.00) for each original or amended plan and profile sheet recorded."

Section 2. G.S. 136-17.2A is amended by adding a new subsection to read:

"(h) Each year, the Secretary shall calculate the amount of funds allocated in that year to each division, the amount of funds obligated, and the amount the obligations exceeded or were below the allocation. The target amounts obtained according to subsection (b) of this section shall be adjusted to account for any differences between allocations and obligations reported for the previous year. The new target amounts shall be used to fulfill the requirements of subsection (d) of

this section for the next update of the Transportation Improvement Program. The adjustment to the target amount shall be allocated by division."

Section 3. Section 1 of this act becomes effective January 1, 2000. Sections 2 and 3 of this act are effective when they become law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:35 p.m. on the 5th day of August, 1999.

H.B. 1216

SESSION LAW 1999-423

AN ACT TO MAKE TECHNICAL CORRECTIONS TO THE JUVENILE JUSTICE REFORM ACT OF 1998.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-2512(h), as enacted by S.L. 1998-202 and renumbered as G.S. 7B-2513(h) by the Codifier of Statutes, reads as rewritten:

"(h) Pending placement of a juvenile with the Office, the court may house a juvenile who has been adjudicated ~~guilty of a delinquent act delinquent for an offense~~ that would be a Class A, B1, B2, C, D, or E felony if committed by an adult in a holdover facility up to 72 hours if the court, based on the information provided by the court counselor, determines that no acceptable alternative placement is available and the protection of the public requires that the juvenile be housed in a holdover facility."

Section 2. G.S. 7B-2603(a), as enacted by S.L. 1998-202, reads as rewritten:

"(a) Notwithstanding G.S. 7B-2602, any order transferring jurisdiction of the district court in a juvenile matter to the superior court may be appealed to the superior court for a hearing on the record. Notice of the appeal must be given in open court or in writing within 10 days after the transfer hearing in the district court. ~~A juvenile who fails to appeal the transfer order to the superior court waives the right to raise the issue of transfer before the Court of Appeals until final disposition of the matter in superior court.~~ The clerk of superior court shall provide the district attorney with a copy of any written notice of appeal filed by the attorney for the juvenile. Upon expiration of the 10 day period in which an appeal may be entered, if an appeal has been entered and not withdrawn, the clerk shall transfer the case to the superior court docket. The superior court shall, within a reasonable time, review the record of the transfer hearing for abuse of discretion by the juvenile court in the issue of transfer. The superior court shall not review the findings as to probable cause for the underlying offense."

Section 3. G.S. 7B-3800, as enacted by S.L. 1998-202, reads as rewritten:

"§ 7B-3800. Adoption of Compact.

The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in a form substantially as contained in this Article. It is the intent of the General Assembly that ~~Article 4~~ Article 37 of this Chapter shall govern interstate placements of children between North Carolina and any other jurisdictions not a party to this Compact. It is the intent of the General Assembly that Chapter 48 of the General Statutes shall govern the adoption of children within the boundaries of North Carolina.

Article I. Purpose and Policy.

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions.

As used in this Compact:

(a) 'Child' means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) 'Sending agency' means a party state officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) 'Receiving state' means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities of [or] for placement with private agencies or persons.

(d) 'Placement' means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

(e) 'Appropriate public authorities' as used in Article III shall, with reference to this State, mean the Department of Health and Human Services and said agency shall receive and act with reference to notices required by Article III.

(f) 'Appropriate authority in the receiving state' as used in paragraph (a) of Article V shall, with reference to this State, means the Secretary.

(g) 'Executive head' as used in Article VII means the Governor.

Article III. Conditions for Placement.

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this Article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

- (1) The name, date, and place of birth of the child.
- (2) The identity and address or addresses of the parents or legal guardian.
- (3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.
- (4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this Article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this Compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement.

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this Compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license,

permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

Article V. Retention of Jurisdiction.

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this Compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

Article VI. Institutional Care of Delinquent Children.

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this Compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to the child's being sent to such other party jurisdiction for institutional care and the court finds that:

- (1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and
- (2) Institutional care in the other jurisdiction is in the best interests of the child and will not produce undue hardship.

Article VII. Compact Administrator.

The executive head of each jurisdiction party to this Compact shall designate an officer who shall be general coordinator of activities under this Compact in the officer's jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this Compact.

Article VIII. Limitations.

This Compact shall not apply to: (a) the sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or nonagency guardian in the receiving state. (b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal.

This Compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this Compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this Compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability.

The provisions of this Compact shall be liberally construed to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state party thereto, the Compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

Section 4. G.S. 95-241(a), as amended by Section 7 of S.L. 1998-202, reads as rewritten:

"(a) No person shall discriminate or take any retaliatory action against an employee because the employee in good faith does or threatens ~~to~~ to do any of the following:

- (1) File a claim or complaint, initiate any inquiry, investigation, inspection, proceeding or other action, or testify or provide information to any person with respect to any of the following:
 - a. Chapter 97 of the General Statutes.
 - b. Article 2A or Article 16 of this Chapter.
 - c. Article 2A of Chapter 74 of the General Statutes.
 - d. G.S. 95-28.1.

e. Article 16 of Chapter 127A of the General Statutes.

f. G.S. 95-28.1A.

- (2) Cause any of the activities listed in subdivision (1) of this subsection to be initiated on an employee's behalf.
- (3) Exercise any right on behalf of the employee or any other employee afforded by Article 2A or Article 16 of this Chapter or by Article 2A of Chapter 74 of the General Statutes.
- (4) Comply with the provisions of Article 27 of Chapter 7B of the General Statutes."

Section 5. G.S. 120-216(1) reads as rewritten:

- "(1) Study the needs of children and youth. This study shall include, but is not limited to:
- a. Determining the adequacy and appropriateness of services:
 1. To children and youth receiving child welfare services;
 2. To children and youth in the juvenile court system; and
 3. Provided by the Division of Social Services and ~~the Division of Youth Services of the Department of Health and Human Services~~, the Office of Juvenile Justice.
 - b. Developing methods for identifying and providing services to children and youth not receiving but in need of child welfare services, children and youth at risk of entering the juvenile court system, and children and youth exposed to domestic violence situations.
 - c. Developing strategies for addressing the issues of school dropout, teen suicide, and adolescent pregnancy.
 - d. Identifying and evaluating the impact on children and youth of other economic and environmental issues.
 - e. Identifying obstacles to ensuring that children who are in secure or nonsecure custody are placed in safe and permanent homes within a reasonable period of time and recommending strategies for overcoming those obstacles. The Commission shall consider what, if anything, can be done to expedite the adjudication and appeal of abuse and neglect charges against parents so that decisions may be made about the safe and permanent placement of their children as quickly as possible."

Section 6. G.S. 131D-10.4(3), as amended by Section 13(ii) of S.L. 1998-202, reads as rewritten:

- "(3) Secure detention facilities as specified in ~~Article 40 of Chapter 7B~~ Article 3C of Chapter 147 of the General Statutes;"

Section 7. G.S. 143B-261 reads as rewritten:

"§ 143B-261. *Department of Correction -- duties.*

It shall be the duty of the Department to provide the necessary custody, supervision, and treatment to control and rehabilitate criminal offenders ~~and juvenile delinquents~~ and thereby to reduce the rate and cost of crime and delinquency."

Section 8. G.S. 143B-262 reads as rewritten:

"§ 143B-262. *Department of Correction -- functions.*

(a) The functions of the Department of Correction shall comprise except as otherwise expressly provided by the Executive Organization Act of 1973 or by the Constitution of North Carolina all functions of the executive branch of the State in relation to corrections and the rehabilitation of adult ~~offenders and juvenile delinquents~~ offenders, including detention, parole, and aftercare supervision, and further including those prescribed powers, duties, and functions enumerated in Article 14 of Chapter 143A of the General Statutes and other laws of this State.

(b) All such functions, powers, duties, and obligations heretofore vested in the Department of Social Rehabilitation and Control and any agency enumerated in Article 14 of Chapter 143A of the General Statutes and laws of this State are hereby transferred to and vested in the Department of Correction except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not of limitation, the functions of:

- (1) The State Department of Correction and Commission of Correction,
- ~~(2) The State Board of Youth Development,~~
- (3) The State Probation Commission,
- (4) The State Board of Paroles,
- (5) The Interstate Agreement on Detainers, and
- (6) The Uniform Act for Out-of-State Parolee Supervision.

(c) The Department shall establish within the Division of Adult Probation and Parole a program of Intensive Supervision. This program shall provide intensive supervision for probationers, post-release supervisees, and parolees who require close supervision in order to remain in the community pursuant to a community penalties plan, community work plan, community restitution plan, or other plan of rehabilitation. The intensive supervision program shall be available to both felons and misdemeanants. Each offender shall be required to comply with the rules adopted for the Program as well as the requirements specified in G.S. 15A-1340.11(5).

(d) The Department shall establish a Substance Abuse Program. This Program shall include an intensive term of inpatient treatment, normally four to six weeks, for alcohol or drug addiction in independent, residential facilities for approximately 100 offenders per facility."

Section 9. G.S. 143B-150.6(e) reads as rewritten:

"(e) Inter-agency fund transfers: The Department may allow the Division of Social ~~Services, the Division of Youth Services, Services~~ and the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, to use funds available to each Division to

support family preservation services provided by the Division under the Program; provided that such use does not violate federal regulations pertaining to, or otherwise jeopardize the availability of federal funds."

Section 10. G.S. 143B-150.8(a)(1) reads as rewritten:

"(1) Provide guidance and advice to the Secretary in the development of a plan for the statewide implementation of an inter-agency family preservation services program whereby family-centered preservation services are available to all counties by July 1, 1995, through the coordinated efforts of the Division of Social ~~Services, Division of Youth Services, Services~~ and Division of Mental Health, Developmental Disabilities, and Substance Abuse Services."

Section 11. G.S. 143B-478, as amended by Section 4(aa) of S.L. 1998-202, reads as rewritten:

"§ 143B-478. *Governor's Crime Commission -- creation; composition; terms; meetings, etc.*

(a) There is hereby created the Governor's Crime Commission of the Department of Crime Control and Public Safety. The Commission shall consist of ~~35~~ 36 voting members and ~~five~~ six nonvoting members. The composition of the Commission shall be as follows:

(1) The voting members shall be:

- a. The Governor, the Chief Justice of the Supreme Court of North Carolina (or his alternate), the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of ~~Correction, Correction~~, the Director of the Office of Juvenile Justice, and the Superintendent of Public Instruction;
- b. A judge of superior court, a judge of district court specializing in juvenile matters, a chief district court judge, a clerk of superior court, and a district attorney;
- c. A defense attorney, three sheriffs (one of whom shall be from a 'high crime area'), three police executives (one of whom shall be from a 'high crime area'), six citizens (two with knowledge of juvenile delinquency and the public school system, two of whom shall be under the age of 21 at the time of their appointment, one representative of a 'private juvenile delinquency program,' and one in the discretion of the Governor), three county commissioners or county officials, and three mayors or municipal officials;
- d. Two members of the North Carolina House of Representatives and two members of the North Carolina Senate.

(2) The nonvoting members shall be the Director of the State Bureau of Investigation, the Secretary of the Department of

~~Crime Control and Public Safety, a representative of the Office of Juvenile Justice, Safety, the Assistant Director of the Intervention/Prevention Bureau of the Office of Juvenile Justice, the Assistant Director of the Detention Bureau of the Office of Juvenile Justice, the Director of the Division of Prisons and the Director of the Division of Adult Probation and Paroles.~~

(b) The membership of the Commission shall be selected as follows:

- (1) The following members shall serve by virtue of their office: the Governor, the Chief Justice of the Supreme Court, the Attorney General, the Director of the Administrative Office of the Courts, the Secretary of the Department of Health and Human Services, the Secretary of the Department of Correction, the Director of the State Bureau of Investigation, the Secretary of the Department of Crime Control and Public Safety, the Director of the Division of Prisons, the Director of the Division of Adult Probation and Parole, ~~the Director of the Division of Youth Services, the Administrator for Juvenile Services of the Administrative Office of the Courts, and the Superintendent of Public Instruction,~~ the Director of the Office of Juvenile Justice, the Assistant Director of the Intervention/Prevention Bureau of the Office of Juvenile Justice, the Assistant Director of the Detention Bureau of the Office of Juvenile Justice, and the Superintendent of Public Instruction. Should the Chief Justice of the Supreme Court choose not to serve, his alternate shall be selected by the Governor from a list submitted by the Chief Justice which list must contain no less than three nominees from the membership of the Supreme Court.
- (2) The following members shall be appointed by the Governor: a representative of the Office of Juvenile Justice, the district attorney, the defense attorney, the three sheriffs, the three police executives, the six citizens, the three county commissioners or county officials, the three mayors or municipal officials.
- (3) The following members shall be appointed by the Governor from a list submitted by the Chief Justice of the Supreme Court, which list shall contain no less than three nominees for each position and which list must be submitted within 30 days after the occurrence of any vacancy in the judicial membership: the judge of superior court, the clerk of superior court, the judge of district court specializing in juvenile matters, and the chief district court judge.
- (4) The two members of the House of Representatives provided by subdivision (a)(1)d. of this section shall be appointed by the Speaker of the House of Representatives and the two members of the Senate provided by subdivision (a)(1)d. of

this section shall be appointed by the President Pro Tempore of the Senate. These members shall perform the advisory review of the State plan for the General Assembly as permitted by section 206 of the Crime Control Act of 1976 (Public Law 94-503).

- (5) The Governor may serve as chairman, designating a vice-chairman to serve at his pleasure, or he may designate a chairman and vice-chairman both of whom shall serve at his pleasure.

(c) The initial members of the Commission shall be those appointed pursuant to subsection (b) above, which appointments shall be made by March 1, 1977. The terms of the present members of the Governor's Commission on Law and Order shall expire on February 28, 1977. Effective March 1, 1977, the Governor shall appoint members, other than those serving by virtue of their office, to serve staggered terms; seven shall be appointed for one-year terms, seven for two-year terms, and seven for three-year terms. At the end of their respective terms of office their successors shall be appointed for terms of three years and until their successors are appointed and qualified. The Commission members from the House and Senate shall serve two-year terms effective March 1, of each odd-numbered year; and they shall not be disqualified from Commission membership because of failure to seek or attain reelection to the General Assembly, but resignation or removal from office as a member of the General Assembly shall constitute resignation or removal from the Commission. Any other Commission member no longer serving in the office from which he qualified for appointment shall be disqualified from membership on the Commission. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, disability, or disqualification of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member from the Commission for misfeasance, malfeasance or nonfeasance.

(e) The Commission shall meet quarterly and at other times at the call of the chairman or upon written request of at least eight of the members. A majority of the voting members shall constitute a quorum for the transaction of business."

Section 12. G.S. 153A-221.1, as amended by Section 13(nn) of S.L. 1998-202, reads as rewritten:

"§ 153A-221.1. *Standards and inspections.*

The legal responsibility of the Secretary of Health and Human Services and the Social Services Commission for State services to county juvenile detention homes under this Article is hereby confirmed and shall include the following: development of State standards under the prescribed procedures; inspection; consultation; technical assistance; and training. ~~Further, the legal responsibility of the Department of Health and Human Services is hereby expanded to give said Department the same legal responsibility as to the~~

~~State-administered regional detention homes which shall be developed by the State Department of Correction as provided by G.S. 7B-4008.~~

~~The Secretary of Health and Human Services~~ Director of the Office of Juvenile Justice shall develop new standards which shall be applicable to county detention homes and regional detention homes as defined by ~~Article 40 of Chapter 7B~~ Article 3C of Chapter 147 of the General Statutes in line with the recommendations of the report entitled Juvenile Detention in North Carolina: A Study Report (January, 1973) where practicable, and such new standards shall become effective not later than July 1, 1977.

The Secretary of Health and Human Services shall also develop standards under which a local jail may be approved as a holdover facility for not more than five calendar days pending placement in a juvenile detention home which meets State standards, providing the local jail is so arranged that any child placed in the holdover facility cannot converse with, see, or be seen by the adult population of the jail while in the holdover facility. The personnel responsible for the administration of a jail with an approved holdover facility shall provide close supervision of any child placed in the holdover facility for the protection of the child."

Section 13. G.S. 7B-2413, as enacted by S.L. 1998-202, reads as rewritten:

"§ 7B-2413. *Predisposition investigation and report.*

The court shall proceed to the dispositional hearing upon receipt of the predisposition report. A risk and needs assessment, containing information regarding the juvenile's social, medical, psychiatric, psychological, and educational history, as well as any factors indicating the probability of the juvenile committing further delinquent acts, shall be conducted for the juvenile and shall be attached to the predisposition report. In cases where no predisposition report is available and the court makes a written finding that a report is not needed, the court may proceed with the dispositional hearing. No predisposition report or risk and needs assessment of any child alleged to be delinquent or undisciplined shall be made prior to an adjudication that the juvenile is within the juvenile jurisdiction of the court unless the juvenile, the juvenile's parent, guardian, or custodian, or the juvenile's attorney files a written statement with the court counselor granting permission and giving consent to the predisposition report or risk and needs assessment. No predisposition report shall be submitted to or considered by the court prior to the completion of the adjudicatory hearing. The court shall permit the juvenile to inspect any predisposition report, including any attached risk and needs assessment, to be considered by the court in making the disposition unless the court determines that disclosure would seriously harm the juvenile's treatment or rehabilitation or would violate a promise of confidentiality. Opportunity to offer evidence in rebuttal shall be afforded the juvenile and the juvenile's parent, guardian, or custodian at the dispositional hearing. The court may order counsel not to disclose parts of the report to the juvenile or the

juvenile's parent, guardian, or custodian if the court finds that disclosure would seriously harm the treatment or rehabilitation of the juvenile or would violate a promise of confidentiality given to a source of information."

Section 14. G.S. 7B-1905(a), as enacted by S.L. 1998-202, reads as rewritten:

"(a) A juvenile meeting the criteria set out in G.S. 7B-1903(a), may be placed in nonsecure custody with a department of social services or a person designated in the order for temporary residential placement in:

- (1) A licensed foster home or a home otherwise authorized by law to provide such care;
- (2) A facility operated by a department of social services; or
- (3) Any other home or facility approved by the court and designated in the order.

In placing a juvenile in nonsecure custody, the court shall first consider whether a relative of the juvenile is willing and able to provide proper care and supervision of the juvenile. If the court finds that the relative is willing and able to provide proper care and supervision, the court shall order placement of the juvenile with the ~~relative.~~ relative unless the court finds that placement with the relative would be contrary to the best interest of the juvenile. Placement of a juvenile outside of this State shall be in accordance with the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter."

Section 15. G.S. 147-33.62 reads as rewritten:

"§ 147-33.62. *Terms of appointment.*

Each member of a Juvenile Crime Prevention Council shall serve for a term of two ~~years.~~ years, except for initial terms as provided in this section. Members may be reappointed. ~~Terms~~ The initial terms of appointment shall begin January 1, 1999. All subsequent terms of appointment shall begin on July 1. In order to provide for staggered terms, persons appointed for the positions designated in subdivisions (9), (10), (12), (15), (17), and (18) of G.S. 147-33.61(a) shall be appointed for an initial ~~one-year~~ term ending on June 30, 2000, and two-year terms thereafter. All other persons appointed to the Council shall be appointed for an initial term ending on June 30, 2001, and two-year terms thereafter."

Section 16. G.S. 147-33.64 reads as rewritten:

"§ 147-33.64. *Meetings; quorum.*

Councils shall meet at least ~~once per month,~~ bi-monthly, or more often if a meeting is called by the chair.

A majority of members shall constitute a quorum."

Section 17. This act becomes effective July 1, 1999.

In the General Assembly read three times and ratified this the 12th day of July, 1999.

Became law upon approval of the Governor at 10:36 p.m. on the 5th day of August, 1999.

H.B. 1072

SESSION LAW 424

AN ACT TO MAKE THE FOLLOWING TECHNICAL CORRECTIONS IN THE ELECTION LAWS: TO CLARIFY THE ROLE OF THE STATE BOARD OF ELECTIONS IN THE PROCESS OF ORDERING NEW ELECTIONS; TO CLARIFY THE APPEAL PROCESS IN CONTESTED ELECTIONS; TO REENACT AND RECODIFY PROVISIONS OF THE PRE-1995 VOTER REGISTRATION LAWS THAT WERE INADVERTENTLY DROPPED IN THE ENACTMENT OF ARTICLE 7A IN CHAPTER 163; TO CLARIFY THE STATUTES CONCERNING CANDIDATE VACANCIES IN THE NONPARTISAN ELECTION OF JUDGES; TO MAKE CLEANUP CHANGES AS A RESULT OF SESSION LAW 1999-31; TO CONFORM THE PETITION STATUTES TO COURT RULINGS AND MAKE OTHER TECHNICAL CHANGES; AND TO CORRECT MISCELLANEOUS MIS-CITATIONS AND ERRORS IN THE ELECTION STATUTES.

The General Assembly of North Carolina enacts:

-- CLARIFYING THE ROLE OF THE STATE BOARD OF ELECTIONS IN THE PROCESS OF ORDERING NEW ELECTIONS.

Section 1. G.S. 163-22.1(a) reads as rewritten:

"(a) State Board's Authority. -- If the State Board of Elections, acting upon the agreement of at least four of its members, and after holding public hearings on election contests, alleged election irregularities or fraud, or violations of elections laws, determines that a new primary, general or special election should be held, the Board may order that a new primary, general or special election be held, either statewide, or in any counties, electoral districts, special districts, or municipalities over whose elections it has jurisdiction. The State Board shall be authorized to order a new election without conducting a public hearing provided a public hearing on the allegations was held by the county or municipal board of elections and the State Board is satisfied that such hearing gave sufficient opportunity for presentation of evidence and provided further that the State Board adopts the findings of the county or municipal board of elections. evidence.

Any new primary, general or special election so ordered shall be conducted under applicable constitutional and statutory authority and shall be supervised by the State Board of Elections and conducted by the appropriate elections officials.

The State Board of Elections has authority to adopt rules and regulations and to issue orders to carry out its authority under this section."

-- CLARIFYING THE APPEAL PROCESS IN CONTESTED ELECTIONS.

Section 2. G.S. 163-181 reads as rewritten:

~~"§ 163-181. Certification of election stayed Appeal process when election is contested.~~

~~The chairman of the county or city board of elections shall not issue a certification of election or nomination or the results of a referendum if there is an election contest pending before the county or city board of election or before the State Board of Elections on appeal or otherwise.~~

~~Appeals from a decision of the State Board of Elections shall be to the Superior Court of Wake County.~~

~~A copy of the State Board of Elections' final decision shall be served on the parties personally or by certified mail. After the decision by the State Board of Elections has been served on the parties, the certification of election shall issue unless the appealing party petitions the Superior Court of Wake County for a stay of the certification within 10 days after the date of service.~~

~~The Superior Court of Wake County shall not issue a stay of certification unless the petitioner shows the court that he intends to appeal the decision of the State Board of Elections and that he is likely to prevail and that the results of the election would be changed in his favor. Mere irregularities in the election which would not change the results of the election shall not be sufficient for the court to issue a stay of certification.~~

~~A copy of the final decision of the State Board of Elections in a contested election shall be served on the parties personally or by certified mail. A decision to order a new election is considered a final decision for purposes of seeking review of the decision. An aggrieved party has the right to appeal the final decision within 10 days of the date of service. After the decision by the State Board of Elections has been served on the parties, the certification of nomination or election or the results of the referendum shall issue unless an appealing party obtains a stay of the certification from the Superior Court of Wake County within 10 days after the date of service.~~

~~Appeals from a decision of the State Board of Elections shall be to the Superior Court of Wake County. The court shall not issue a stay of certification of nomination or election or the results of a referendum unless the petitioner shows the court that the petitioner has appealed the decision of the State Board of Elections, that the petitioner is an aggrieved party, that the petitioner is likely to prevail, and that the results of the election would be changed in the petitioner's favor. Mere irregularities in the election which would not change the results of the election shall not be sufficient for the court to issue a stay of certification.~~

~~The chair of the county or municipal board of elections shall not issue a certification of nomination or election or the results of a referendum until 10 days after service of a final decision in an election contest or until an election contest is dismissed. No certification shall issue while an election contest is pending before the county, municipal, or State board of elections on appeal or otherwise."~~

-- REENACTING AND RECODIFYING PROVISIONS OF PRE-1995 VOTER REGISTRATION ARTICLE THAT WERE INADVERTENTLY DROPPED IN ENACTMENT OF ARTICLE 7A OF CHAPTER 163.

Section 3.(a) Article 4 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-37. Duty of county board of commissioners.

The respective boards of county commissioners shall appropriate reasonable and adequate funds necessary for the legal functions of the county board of elections, including reasonable and just compensation of the director of elections."

Section 3.(b) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-131. Accessible polling places.

(a) The State Board of Elections shall promulgate rules to assure that any disabled or elderly voter assigned to an inaccessible polling place, upon advance request of such voter, will be assigned to an accessible polling place. Such rules should allow the request to be made in advance of the day of the election.

(b) Words in this section have the meanings prescribed by P.L. 98-435, except that the term 'disabled' in this section has the same meaning as 'handicapped' in P.L. 98-435."

-- CLARIFYING THE STATUTES CONCERNING CANDIDATE VACANCIES IN THE NONPARTISAN ELECTION OF JUDGES.

Section 4.(a) G.S. 163-327 reads as rewritten:

"§ 163-327. ~~Death~~ Vacancies of candidates or elected officers.

(a) Death or Disqualification of Candidate Before Primary. -- If a candidate for nomination in a primary ~~dies~~, dies or becomes disqualified, or withdraws disqualified before the primary but after the ballots have been printed, the State Board of Elections shall determine whether or not there is time to reprint the ballots. If the Board determines that there is not enough time to reprint the ballots, the deceased or disqualified candidate's name shall remain on the ballots. If that candidate receives enough votes for nomination, such votes shall be disregarded and the candidate receiving the next highest number of votes below the number necessary for nomination shall be declared nominated. If the death or disqualification of the candidate leaves only two candidates for each office to be filled, the nonpartisan primary shall not be held and all candidates shall be declared nominees.

(b) Death, Disqualification, or Resignation of Official After Election. -- If a person elected to the office of superior court judge dies, becomes disqualified, or resigns on or after election day and before he has qualified by taking the oath of office, the office shall be deemed vacant and shall be filled as provided by law."

Section 4.(b) G.S. 163-328 reads as rewritten:

"§ 163-328. Failure of candidates to file; death or other disqualification of a candidate before election.

(a) Insufficient Number of Candidates. -- If when the filing period expires, candidates have not filed for an office to be filled under this Article, the State Board of Elections shall extend the filing period for five days for any such offices.

(b) Death or Other Disqualification of Candidate; Reopening Filing. -- If there is no primary because only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections shall, upon notification of the ~~death,~~ death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections receives notice of the candidate's ~~death,~~ death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election, and such election shall be conducted on the plurality basis.

(c) ~~Death of~~ Vacancy Caused by Nominated Candidate; Ballots Not Reprinted. -- If the ballots have been printed at the time the State Board of Elections receives notice of a candidate's death, other disqualification, or resignation, and if the Board determines that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the ~~deceased~~ vacated candidate shall remain on the ballots. If a ~~deceased~~ vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections shall declare the office vacant and it shall be filled in the manner provided by law."

-- CONFORMING THE STATUTES TO COURT RULINGS CONCERNING PETITIONS AND MAKING OTHER TECHNICAL CHANGES TO THE PETITION STATUTES.

Section 5.(a)G.S. 163-96(b) reads as rewritten:

"§ 163-96. *"Political party" defined; creation of new party.*

(a) Definition. -- A political party within the meaning of the election laws of this State shall be either:

- (1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors; or
- (2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new

political party which are signed by registered and qualified voters in this State equal in number to two percent (2%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of four congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chairman of the proposed new political party.

(b) Petitions for New Political Party. -- Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED AND WHOSE STATE CHAIRMAN IS, RESIDING AT..... AND WHO CAN BE REACHED BY TELEPHONE AT..... THE SIGNERS OF THIS PETITION INTEND TO ORGANIZE A NEW POLITICAL PARTY TO PARTICIPATE IN THE NEXT SUCCEEDING GENERAL ELECTION."

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

~~The validity of the signatures on the petitions shall be proved in accordance with one of the following alternative procedures:~~

- ~~(1) The signers may acknowledge their signatures before an officer authorized to take acknowledgments, after which that officer shall certify the validity of the signatures by appropriate notation attached to the petition, or~~
- ~~(2) A person in whose presence a petition was signed may go before an officer authorized to take acknowledgments and, after being sworn, testify to the genuineness of the signatures on the petition, after which the officer before~~

~~whom he has testified shall certify his testimony by appropriate notation attached to the petition.~~

(b1) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

- (1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.
- (2) To attach to the petition his signed certificate
 - a. Stating that the signatures on the petition have been checked against the registration records and
 - b. Indicating the number found qualified and registered to vote in his county.
- (3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections ~~shall require a fee of five cents (5c) for each signature appearing and~~ shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are ~~presented and the required fee received.~~ presented.

(c) Repealed by Session Laws 1983, c. 576, s. 3."

Section 5.(b) G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. -- Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

- (1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. Each No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections, each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The Provided the petitions are timely submitted, the chairman shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his

county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are ~~presented and a fee of five cents (5¢) for each name appearing on the petition has been received.~~ presented.

- (2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification and deadline for submission to the county board shall be the same as specified in (1) above.
- (3) If the office is a county office or a single county legislative district, file written petitions with the chairman or director of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections. Each petition shall be presented to the chairman or director of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.
- (4) If the office is a partisan municipal office, file written petitions with the chairman or director of the county board of elections in the county wherein the municipality is located

supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions ~~and affidavit~~ have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year."

Section 5.(c) G.S. 163-123(c)(1) reads as rewritten:

"(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions shall be filed on or before noon on the 90th day before the general election. They shall be signed by 500 qualified voters of the State. ~~Before being filed with the State Board of Elections, No later than 5:00 p.m. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections,~~ each petition shall be presented to the board of elections of the county in which the signatures were obtained. A petition presented to a county board of elections shall contain only names of voters registered in that county. ~~The Provided the petitions are timely submitted, the~~ chairman of the county board of elections shall examine the names on the petition and place a check mark by the name of each signer who is qualified and registered to vote in his county. The chairman of the county board shall attach to the petition his signed certificate. On his certificate the chairman shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers who are qualified and registered to vote in his county and eligible to vote for that office. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. The chairman of the county board shall complete the verification within two weeks from the date the petition is presented. ~~At the time of submitting the petition, a fee of five cents (5C) shall be paid for each name appearing on the petition."~~

-- CLEANUP CHANGES AS A RESULT OF SESSION LAW 1999-31.

Section 6.(a) G.S. 163-278.6(14) reads as rewritten:

"(14) The term 'political committee' means a combination of two or more individuals, ~~or~~ such as any person, committee, association, organization, or other entity that makes, or accepts anything of value to make, contributions or expenditures and has one or more of the following characteristics:

- a. Is controlled by a candidate;
- b. Is a political party or executive committee of a political party or is controlled by a political party or executive committee of a political party;
- c. Is created by a corporation, business entity, insurance company, labor union, or professional association pursuant to G.S. 163-278.19(b); or
- d. Has as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates.

Supporting or opposing the election of clearly identified candidates includes supporting or opposing the candidates of a clearly identified political party.

An entity is rebuttably presumed to have as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates if it contributes or expends or both contributes and expends during an election cycle more than three thousand dollars (\$3,000). The presumption may be rebutted by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle. Contributions to referendum committees and expenditures to support or oppose ballot issues shall not be facts considered to give rise to the presumption or otherwise be used in determining whether an entity is a political committee.

If the entity qualifies as a 'political committee' under sub-subdivision a., b., c., or d. of this subdivision, it continues to be a political committee if it receives contributions or makes expenditures or maintains assets or liabilities. A political committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report."

Section 6.(b) G.S. 163-278.6(18b) reads as rewritten:

"(18b) The term 'referendum committee' means a combination of two or more individuals ~~or any business entity, corporation, insurance company, labor union, professional association,~~ such as a committee, association, or organization, or other entity or a combination of two or more business entities, corporations, insurance companies, labor unions, or professional associations such as a committee, association, organization, or other entity the primary ~~or~~

~~incidental purpose of which is to support or oppose the passage of any referendum on the ballot, or to influence or attempt to influence the result of a referendum, or which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the outcome of any referendum, or which receives contributions to repay loans or cover a deficit, or which makes expenditures to satisfy obligations of a referendum already held. ballot. If the entity qualifies as a 'referendum committee' under this subdivision, it continues to be a referendum committee if it receives contributions or makes expenditures or maintains assets or liabilities. A referendum committee ceases to exist when it winds up its operations, disposes of its assets, and files its final report."~~

Section 6.(c) G.S. 163-278.23 reads as rewritten:

"§ 163-278.23. *Duties of Executive Secretary-Director of Board.*

The Executive Secretary-Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The Executive Secretary-Director shall advise, or cause to be advised, no more than 30 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum committee, ~~or media~~ media, or other entity that may be required to file a statement under this Article if:

- (1) It appears that the individual, candidate, treasurer, political committee, referendum ~~committee or media~~ committee, media, or other entity has failed to file a statement as required by law or that a statement filed does not conform to this Article; or
- (2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum ~~committee or media~~ committee, media, or other entity has failed to file a statement required by this Article.

The entity that is the subject of the complaint will be given an opportunity to respond to the complaint before any action is taken requiring compliance.

The Executive Secretary-Director of the Board of Elections shall issue written rulings to ~~candidates and may issue written rulings to candidates~~, the communications media, political committees, ~~and referendum committees~~ committees, or other entities upon request, regarding filing procedures and compliance with this Article. Any such ruling so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, ~~or referendum~~

~~committees~~ committees, or other entities rely on and comply with the ruling of the Executive Secretary-Director of the Board of Elections, then prosecution on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Secretary-Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports."

Section 6.(d) This section is effective when this act becomes law.

-- CORRECTING MISCITATIONS AND OTHER TECHNICAL ERRORS IN THE ELECTIONS STATUTES.

Section 7.(a) G.S. 163-22(e) reads as rewritten:

"(e) The State Board of Elections shall determine, in the manner provided by law, the form and content of ballots, instruction sheets, pollbooks, talley sheets, abstract and return forms, certificates of election, and other forms to be used in primaries and elections. The Board shall furnish to the county ~~and municipal~~ boards of elections the registration application forms required pursuant to G.S. ~~163-67, 163-82.3~~. The State Board of Elections shall direct the county boards of elections to purchase a sufficient quantity of all forms attendant to the registration and elections process. In addition, the State Board shall provide a source of supply from which the county boards of elections may purchase the quantity of pollbooks needed for the execution of its responsibilities. In the preparation of ballots, pollbooks, abstract and return forms, and all other forms, the State Board of Elections may call to its aid the Attorney General of the State, and it shall be the duty of the Attorney General to advise and aid in the preparation of these books, ballots and forms."

Section 7.(b) G.S. 163-33(10) reads as rewritten:

"(10) To appoint and remove the board's clerk, assistant clerks, and other employees; and to appoint and remove precinct transfer assistants as provided in G.S. ~~163-72.3, 163-82.15(g)~~."

Section 7.(c) G.S. 163-82.4(b) reads as rewritten:

"(b) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. -- The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

- (1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. ~~163-275(a), 163-275(4)~~.
- (2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.
- (3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration

application will remain confidential and will be used only for voter registration purposes."

Section 7.(d) G.S. 163-82.4(c) reads as rewritten:

"(c) Party Affiliation or Unaffiliated Status. -- The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. ~~163-116~~, 163-119, but may vote in any other primary or general election. The application form shall so state."

Section 7.(e) G.S. 163-111(e) reads as rewritten:

"(e) Date of Second Primary; Procedures. -- If a second primary is required under the provisions of this section, the appropriate board of elections, State or county, shall order that it be held four weeks after the first primary.

There shall be no registration of voters between the dates of the first and second primaries. Persons whose qualifications to register and vote mature after the day of the first primary and before the day of the second primary may register on the day of the second primary and, when thus registered, shall be entitled to vote in the second primary. The second primary is a continuation of the first primary and any voter who files a proper and timely affidavit of transfer of precinct, under the provisions of G.S. ~~163-72(e)~~, 163-82.15, before the first primary may vote in the second primary without having to refile the affidavit of transfer if he is otherwise qualified to vote in the second primary. Subject to this provision for registration, the second primary shall be held under the laws, rules, and regulations provided for the first primary."

Section 7.(f) G.S. 163-150(a) reads as rewritten:

"(a) Checking Registration. -- A person seeking to vote shall enter the voting enclosure at the voting place through the appropriate entrance and shall at once state his name and place of residence to one of the judges of election. In a primary election, the voter shall also state the political party with which he affiliates and in whose primary he desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. ~~163-116~~, 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The judge to whom the voter gives this information shall announce the name and residence of the voter in a distinct tone of voice. After examining the precinct registration

records, the chief judge shall state whether the person seeking to vote is duly registered."

Section 7.(g) G.S. 163-150(b) reads as rewritten:

"(b) Distribution of Ballots; Information. -- If the voter is found to be registered and is not challenged, or, if challenged and the challenge is overruled as provided in G.S. 163-88, the responsible judge of election shall hand him an official ballot of each kind he is entitled to vote. In a primary election the voter shall be furnished ballots of the political party with which he affiliates and no others, except that unaffiliated voters who are permitted to vote in a party primary under G.S. ~~163-116~~ 163-119 shall be furnished ballots for that primary. No such unaffiliated voter shall vote in the primary of more than one party on the same day. It shall be the duty of the chief judge and judges holding the primary or election to give any voter any information he desires in regard to the kinds of ballots he is entitled to vote and the names of the candidates on the ballots. In response to questions asked by the voter, the chief judge and judges shall communicate to him any information necessary to enable him to mark his ballot as he desires."

Section 7.(h) G.S. 163-274(13) reads as rewritten:

"(13) Except as authorized by G.S. ~~163-72.2(b)~~, 163-82.15, for any person to provide false information, or sign the name of any other person, to a written report under G.S. ~~163-72.2~~, 163-82.15."

Section 7.(i) G.S. 163-275(14) reads as rewritten:

"(14) For any officer ~~authorized by G.S. 163-80~~ to register voters and any other individual to knowingly and willfully receive, complete, or sign an application to register from any voter contrary to the provisions of G.S. ~~163-72~~; 163-82.4; or".

Section 7.(j) G.S. 163-213.2 reads as rewritten:

"§ 163-213.2. *Primary to be held; date; qualifications and registration of voters.*

On the Tuesday after the first Monday in May, 1992, and every four years thereafter, the voters of this State shall be given an opportunity to express their preference for the person to be the presidential candidate of their political party.

Any person otherwise qualified who will become qualified by age to vote in the general election held in the same year of the presidential preference primary shall be entitled to register and vote in the presidential preference primary. Such persons may register not earlier than 60 days nor later than the last day for making application to register under G.S. ~~163-67~~ 163-82.6 prior to the said primary. In addition, persons who will become qualified by age to register and vote in the general election for which the primary is held, who do not register during the special period may register to vote after such period as if they were qualified on the basis of age, but until they are qualified by age to vote, they may vote only in primary elections."

Section 7.(k) G.S. 163-253 reads as rewritten:

"§ 163-253. *Article inapplicable to persons after change of status; reregistration required.*

Upon discharge from the armed forces of the United States or termination of any other status qualifying him to register and vote by absentee ballot under the provisions of this Article, the voter shall not be entitled to vote by military absentee ballot, and if he was registered under the provisions of this Article his registration shall become void and he shall be required to register under the provisions of Article 7A before being entitled to vote in any primary or election."

Section 7.(l) G.S. 163-254 reads as rewritten:

"§ 163-254. *Registration and voting on primary or election day.*

Notwithstanding any other provisions of Chapter 163 of the General Statutes, any person entitled to vote an absentee ballot pursuant to G.S. 163-245 shall be permitted to register in person at any time including the day of a primary or election. Should such person's eligibility to register or vote as provided in G.S. 163-245 terminate after the ~~registration records have closed~~ twenty-fifth day prior to a primary or election, such person, if he appears in person, shall be entitled to register if otherwise qualified ~~during the time the records are closed,~~ after the twenty-fifth day before the primary or election, or on the primary or election day, and shall be permitted to vote if such person is otherwise qualified."

Section 7.(m) G.S. 163-278.8(f) reads as rewritten:

"(f) All expenditures for nonmedia expenses (except postage) of more than fifty dollars (\$50.00) shall be made by check only. All expenditures for nonmedia expenses of fifty dollars (\$50.00) or less may be made by check or by cash payment. All nonmedia expenditures of more than fifty dollars (\$50.00) shall be accounted for and reported individually and separately, but expenditures of ~~less than~~ fifty dollars (\$50.00) or less may be accounted for and reported in an aggregated amount, but in that case the treasurer shall account for and report that he made expenditures of ~~less than~~ fifty dollars (\$50.00) or less each, the amounts, dates, and the purposes for which made. In the case of a nonmedia expenditure required to be accounted for individually and separately by this subsection, if the expenditure was to an individual, the report shall list the name and address of the individual."

Section 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 12th day of July, 1999.

Became law upon approval of the Governor at 10:39 p.m. on the 5th day of August, 1999.

MUTUAL BURIAL ASSOCIATIONS, AND MINIMUM BURIAL DEPTHS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-472.2 reads as rewritten:

"§ 143B-472.2. *Duties of Board; meetings.*

It shall be the duty of the North Carolina Board of Mortuary Science to supervise, pursuant to this Article, all burial associations authorized by this Article to operate in North Carolina, to determine that such associations are operated in conformity with this Article and the rules adopted pursuant to this Article; to ~~assist the Board of Mortuary Science with prosecution of~~ prosecute violations of this Article or rules adopted pursuant thereto; and to protect the interest of members of mutual burial associations.

The North Carolina Board of Mortuary Science, after a public hearing, may promulgate reasonable rules and regulations for the enforcement of this Article and in order to carry out the intent thereof. The Board is authorized and directed to adopt specific rules to provide for the orderly transfer of a member's benefits in cash or merchandise and services from the funeral director sponsoring the member's association to the funeral establishment which furnishes a funeral service, or merchandise, or both, for the burial of the member, provided that any funeral establishment to which the member's benefits are transferred in accordance with such rules shall, if located in North Carolina, be a funeral establishment registered and permitted under the provisions of G.S. 90-210.25 or shall, if located in any other state, territory or foreign country, be a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. One or more burial associations operating in North Carolina may merge into another burial association operating in North Carolina and two or more burial associations operating in North Carolina may consolidate into a new burial association provided that any such plan of merger or plan of consolidation shall be adopted and carried out in accordance with rules adopted by the Board pursuant to this Article.

All rules heretofore adopted by the North Carolina Mutual Burial Association Commission or the North Carolina Board of Mortuary Science in accordance with prior law and which have not been amended, rescinded, revoked or otherwise changed, or which have not been nullified or made inoperative or unenforceable because of any statute enacted after the adoption of any such rule, shall remain in full force and effect until amended, rescinded, revoked or otherwise changed by action of the North Carolina Board of Mortuary Science as set out above, or until nullified or made inoperative or unenforceable because of statutory enactment or court decision.

Members of the Board shall receive, when attending such regular or special meetings such per diem, expense allowance and travel allowance as are allowed other commissions and boards of the State. The legal adviser to the Board shall be entitled to actual expenses

when attending regular or special meetings of the Board held other than in Raleigh. All expenses of the Board shall be paid from funds coming to the Board pursuant to this Article or appropriated for this purpose."

Section 2. Article 10 of G.S. 143B-472.3 reads as rewritten:

"Article 10. It is understood and stipulated that the benefits provided for shall be payable only to a funeral establishment which provides a funeral service for a deceased member and which, if located in North Carolina, is a funeral establishment registered under the provisions of G.S. ~~90-210.17~~ 90-210.25 or which, if located in any other state, territory or foreign country, is a funeral establishment recognized by and operating in conformity with the laws of such other state, territory or foreign country. Upon the death of any member, it shall be the duty of the person or persons making the funeral arrangements for such deceased member to notify the secretary of the member's burial association of the death of such member. The person or persons making the funeral arrangements for such deceased member shall have 30 days from the date of the death of such member in which to make demand upon the burial association for the funeral benefits to which such member is entitled.

The benefits provided for are to be paid by the burial association to the funeral director providing such funeral and burial service either in cash or in merchandise and service as elected by the person or persons making the funeral arrangements for such deceased member. If the burial association shall fail, on demand, to provide the benefits to which the deceased member was entitled to the funeral establishment which provided the funeral service for the deceased member, then the benefits shall be paid in cash to the representative of the deceased member qualified under law to receive such benefits."

Section 3. Part 13 of Article 10 of Chapter 143B is amended by adding the following new section:

"§ 143B-472.29. Acquisition, merger, dissolution, and liquidation of mutual burial associations.

(a) Any insurance company which desires to purchase the assets of or to merge with a burial association as provided in G.S. 143B-472.28 shall submit to the Board of Mortuary Science and to the secretary of the association a written proposal containing the terms and conditions of the proposed purchase or merger. A proposal may be conditioned upon an increase in the assessments of an association in the manner set out in subsection (g) of this section. In such a case, the issues of purchase or merger and an increase in assessments may be considered at the same meeting of the association.

(b) Upon receipt of a written proposal:

(1) The Board shall issue an order directing the association to hold a meeting of the membership within 30 days following receipt of the order for the purpose of voting on the proposal.

- (2) Within 10 days of receiving the order from the Board, the association shall give at least 10 days' written notice of the meeting to each of its members. The notice shall:
- a. State the date, time, and place of the meeting.
 - b. State the purpose of the meeting.
 - c. Contain or have attached the proposal submitted by the insurance company.
 - d. Contain a statement limiting the time that each member will be permitted to speak to the proposal, if the association deems it advisable.

(c) A representative of the insurance company shall be permitted to attend the meeting held by the association for the purposes of explaining the proposal and answering any questions from the members. The officers of the association may present their views concerning the proposal. Any member of the association who wishes to speak to the proposal shall be permitted to do so subject to any time limitation stated in the notice of the meeting.

(d) The secretary of the association shall record the name of every member who is present at the meeting and shall determine whether there is a quorum. The presence of 15 members or ten percent (10%) of the membership, whichever is greater, shall constitute a quorum. Acceptance or rejection of the proposal shall be by majority vote of the members present and voting. Any member who is at least 18 years of age shall be permitted to vote. A parent or guardian of any member who is under 18 years of age may vote on behalf of his or her child or ward, but only one vote may be cast on behalf of that member.

(e) The secretary of the association shall certify the result of the vote and the presence of a quorum to the Board within five days following the meeting and shall include with the certification a copy of the notice of the meeting that was sent to the members of the association.

(f) The Board shall immediately review the certification, the notice, and any other records that may be necessary to determine the adequacy of notice, the presence of a quorum, and the validity of the vote. Upon determining that the meeting and vote were regular and held following proper notice and that a majority of a quorum of the members voted in favor of the proposal, the Board shall issue an order approving the purchase or merger and directing that the purchase or merger proceed in accordance with the proposal.

(g) Any burial association whose current assessments are not, or are unlikely to be within the next three years, adequate to reach or maintain a reserve of at least twenty-one dollars (\$21.00) per member or are inadequate to meet the requirements of a proposal from an insurance company to acquire the assets of or to merge with the association may increase its assessments by an amount necessary to reach and maintain the reserve or to meet the proposal. The increase shall be approved by a vote of the members of the association at a

regular meeting of the association or at a special meeting called for the purpose of increasing assessments.

- (1) Any officer or director of the association may call a special meeting for the purpose of increasing assessments, and the secretary shall call a special meeting for such purpose upon the request of at least ten percent (10%) of the members or upon receipt of a proposal from an insurance company that is conditioned upon an increase in assessments.
- (2) Written notice setting out the date, time, place, and the purpose of the meeting shall be hand delivered or sent by first-class mail, postage prepaid, to the last known address of each member of the association at least 10 days in advance of the meeting.
- (3) No vote may be had on the question of an increase in assessments unless a quorum of the members of the association is present at the meeting. A quorum shall be conclusively presumed if 15 members or ten percent (10%) of the membership of the association, whichever is greater, is present at the meeting.
- (4) The proposal to increase the assessments shall be approved by an affirmative vote of a majority of the members present and voting.
- (5) The secretary of the association within five days following the meeting shall certify the result of the vote and the presence of a quorum to the Board in the manner and for the purposes set out in subsections (e) and (f) of this section.

(h) Upon a written request from an association that has held a valid meeting and voted for voluntary dissolution in accordance with G.S. 143B-472.3, the Board shall issue an order of liquidation for that association.

(i) Upon receipt of a request for voluntary dissolution under subsection (h), the Board shall issue an order of liquidation. The Board's order may direct that the agreements for members' benefits be transferred to a financially sound mutual burial association, as well as all records, property, and unexpended balances of funds of the association to be liquidated, if the financially sound mutual burial association agrees in writing to accept the transfer. The Board's order shall direct the burial association to complete the liquidation and to file a final report with the Board no later than December 31 of the year of the liquidation. Upon receipt of the order of liquidation, the burial association shall:

- (1) Cease accepting new members.
- (2) Collect all debts owed to the association and pay all debts owed by the association from monies on hand, including the reserve.
- (3) Distribute pro rata any remaining monies on hand and in the reserve among those who were members of the association and whose transfer could not be accomplished on the date

that the liquidation order was issued by the Board. Each member's distributive share shall be determined by dividing the amount of the member's benefit by the aggregate benefits of all members of the association and then multiplying the total amount of money available for distribution by the percentage so derived. Assessments owed by the members to the association at the time of distribution shall be taken into account and shall be offset against the members' distributive shares.

- (4) Issue a certificate to members in an amount that equals the difference between the distributive share issued in subdivision (3) of this subsection and the full amount of the member's association benefit. Any certificate issued shall supersede and supplant any other certificate already issued by the association. The certificate shall be on a form prescribed by the Board and shall be prepared and distributed by the association at its expense.
- (5) File a final report with the Board on or before December 31 in the year in which the order of liquidation was issued. This report shall show all receipts and disbursements, including the amount distributed to each member, since the last annual report of the association was filed with the Board.

(j) A certificate issued under subsection (i) of this section may be used as a credit toward the cost of funeral services, facilities, and merchandise at any funeral establishment that agrees on forms prescribed by the Board to accept such certificates. A funeral establishment that agrees to accept certificates shall do so until the agreement with the Board expires. The Board shall maintain and distribute to the public a list of funeral establishments that will accept certificates.

(k) Upon receipt of the final report of dissolution by the association, which is required by subsection (i) of this section, the Board shall immediately review the final report and shall notify the association whether the report is complete and has been accepted. Upon acceptance of the final report by the Board, all licenses issued to soliciting agents of the association pursuant to G.S. 143B-472.6 are automatically cancelled."

Section 4. G.S. 90-210.25A reads as rewritten:

"§ 90-210.25A. *Minimum burial depth.*

When final disposition of a human body entails interment, the top of the uppermost part of the burial vault or other encasement shall be a minimum of 18 inches below the ground surface. This section does not apply to burials where no part of the burial vault or other encasement containing the body is touching the ground. to:

- (1) Burials where no part of the burial vault or other encasement containing the body is touching the ground.
- (2) Burials where the land is located in a family owned cemetery that was established by deed recorded prior to January 1,

1989, and the individual to be buried is to be buried in a surface burial vault in a manner similar to that of the individual's deceased spouse who was buried prior to January 1, 1981."

Section 5. The Legislative Research Commission is authorized to study issues relating to the insolvency of mutual burial associations in North Carolina. The Commission shall make a final report of its findings and recommendations, including any legislative proposals, to the 2001 General Assembly. The Commission may make an interim report to the 1999 General Assembly, 2000 Regular Session.

Section 6. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 10:40 p.m. on the 5th day of August, 1999.

H.B. 1074

SESSION LAW 1999-426

AN ACT TO REQUIRE THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY AND TO MAKE VIOLATION A CLASS 2 MISDEMEANOR; TO ESTABLISH THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION; TO ALLOW COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT; TO CREATE A PILOT PROGRAM TO ALLOW THE TEMPORARY USE OF TWO VOTING PLACES FOR THE SAME PRECINCT; TO ALLOW COUNTIES TO REQUIRE THAT ADEQUATE PARKING BE PROVIDED AT VOTING PLACES THAT ARE PUBLIC BUILDINGS; TO PROVIDE FOR SUPERVISION, ASSISTANCE, AND TRAINING BY THE STATE BOARD OF ELECTIONS FOR MUNICIPAL BOARDS OF ELECTIONS AND TO PROVIDE FOR REMEDIES; TO INCREASE MINIMUM COMPENSATION FOR COUNTY ELECTIONS DIRECTORS; TO LOWER THE THRESHOLD FOR A FULL-TIME ELECTIONS OFFICE; TO PROVIDE FOR CERTAIN DONATIONS TO POLITICAL PARTY HEADQUARTERS BUILDING FUNDS; AND TO CHANGE THE STATUTE CONCERNING A CANDIDATE'S SIGNATURE ON A FINANCE REPORT TO REFLECT TRADITIONAL PRACTICE.

The General Assembly of North Carolina enacts:

-- REQUIRING THAT A SIGNED VOTER REGISTRATION FORM BE DELIVERED TO THE BOARD OF ELECTIONS BY ANYONE DELEGATED THAT RESPONSIBILITY.

Section 1.(a)G.S. 163-82.6(a) reads as rewritten:

"(a) How the Form May Be Submitted. -- The county board of elections shall accept any form described in G.S. 163-82.3 if the applicant submits the form by mail or in person. The applicant may delegate the submission of the form to another person. Any person who communicates to an applicant acceptance of that delegation shall deliver that form so that it is received by the appropriate county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be a Class 2 misdemeanor for any person to communicate to the applicant acceptance of that delegation and then fail to make a good faith effort to deliver the form so that it is received by the county board of elections in time to satisfy the registration deadline in subdivision (1) or (2) of subsection (c) of this section for the next election. It shall be an affirmative defense to a charge of failing to make a good faith effort to deliver a delegated form by the registration deadline that the delegatee informed the applicant that the form would not likely be delivered in time for the applicant to vote in the next election. It shall be a Class 2 misdemeanor for any person to sell or attempt to sell a completed voter registration form or to condition its delivery upon payment."

Section 1.(b)G.S. 163-82.6(c) reads as rewritten:

"(c) Registration Deadlines for an Election. -- In order to be valid for an election, the form:

- (1) If submitted by mail, must be postmarked at least 25 days before the election, except that any mailed application on which the postmark is missing or unclear is validly submitted if received in the mail not later than 20 days before the election,
- (2) If submitted in ~~person (by the applicant or another person),~~ person, must be received by the county board of elections by 5:00 p.m. on the twenty-fifth day before the election,
- (3) If submitted through a delegatee who violates the duty set forth in subsection (a) of this section, must be signed by the applicant and given to the delegatee not later than 25 days before the election,

except as provided in subsection (d) of this section."

Section 1.(c) This section becomes effective January 1, 2000, and applies to all offenses occurring and all applications signed on and after that date.

-- ESTABLISHING THE CLASS 2 MISDEMEANOR OF AN ELECTION OFFICIAL OR EMPLOYEE ALTERING VOTER REGISTRATION RECORDS WITHOUT WRITTEN AUTHORIZATION.

Section 2.(a)G.S. 163-274 is amended by adding a new subdivision to read:

- "(1a) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without either the written

authorization of the applicant or voter or the written authorization of the State Board of Elections;".

Section 2.(b) This section becomes effective October 1, 1999, and applies to all offenses committed on and after that date.

-- ALLOWING COUNTIES TO USE A VOTING PLACE OUTSIDE THE PRECINCT, WITH APPROVAL BY THE STATE BOARD OF ELECTIONS.

Section 3.(a) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-130A. Out-of-precinct voting places.

A county board of elections, by unanimous vote of all its members, may establish a voting place for a precinct that is located outside that precinct. The county board's proposal is subject to approval by the Executive Secretary-Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Secretary-Director. Approval by the Executive Secretary-Director of the county's proposed plan shall be conditioned upon the county board of elections' demonstrating that:

- (1) No facilities adequate to serve as a voting place are located in the precinct;
- (2) Adequate notification and publicity are provided to notify voters in the precinct of the new polling location;
- (3) The plan does not unfairly favor or disfavor voters with regard to race or party affiliation;
- (4) The new voting place meets all requirements for voting places including accessibility for elderly and disabled voters; and
- (5) The proposal provides adequately for security against fraud.

Any approval granted by the Executive Secretary-Director for a voting place outside the precinct is effective only for one primary and election and must be reevaluated by the county board of elections and the Executive Secretary-Director annually to determine whether it is still the only available alternative for that precinct."

Section 3.(b) This section is effective when this act becomes law and expires January 1, 2002.

-- CREATING A PILOT PROGRAM TO ALLOW THE TEMPORARY USE OF TWO VOTING PLACES FOR THE SAME PRECINCT.

Section 4.(a) Article 12 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-130B. Temporary use of two voting places for certain precincts; pilot program.

A county board of elections, by unanimous vote of all its members, may propose to designate two voting places to be used temporarily for the same precinct. The temporary designation of a voting place shall continue only for the term of office of the county board of elections making the designation. For any precinct that is temporarily given two

voting places, the county board shall assign every voter to one or the other of those voting places.

The county board's proposal is subject to approval by the Executive Secretary-Director of the State Board of Elections. The county board shall submit its proposal in writing to the Executive Secretary-Director. The Executive Secretary-Director may approve a proposal under this section in not more than three counties, to be a pilot program. The Executive Secretary-Director shall approve that proposal only if it finds all of the following:

- (1) That the precinct has more registered voters than can adequately be accommodated by any single potential voting place available for the precinct.
- (2) That no boundary line that complies with Article 12A of this Chapter can be identified that adequately divides the precinct.
- (3) That the county board can account for, by street address number, the location of every registered voter in the precinct and fix that voter's residence with certainty on a map.
- (4) That no more than three other precincts in the same county will have two voting places.
- (5) That both voting places for the precinct would have adequate facilities for the elderly and disabled.
- (6) That the proposal provides adequately for security against fraud.
- (7) That the proposal does not unfairly favor or disfavor voters with regard to race or party affiliation.

The county board shall designate a full set of precinct officials, in the manner set forth in Article 5 of this Chapter, for each voting place designated for the precinct."

Section 4.(b) This section becomes effective January 2, 2000, and expires January 2, 2002. The Executive Secretary-Director of the State Board of Elections shall study the operation and consequences of the pilot program created by this section and report findings and recommendations to the 2001 General Assembly by February 1, 2001.
 -- ALLOWING COUNTIES TO REQUIRE THAT ADEQUATE PARKING BE PROVIDED AT VOTING PLACES THAT ARE PUBLIC BUILDINGS.

Section 5.(a) G.S. 163-129 reads as rewritten:

"§ 163-129. Structure at voting place; marking off limits of voting place.

At the voting place in each precinct established under the provisions of G.S. 163-128, the county board of elections shall provide or procure by lease or otherwise a suitable structure or part of a structure in which registration and voting may be conducted. To this end, the county board of elections shall be entitled to demand and use any school or other State, county, or municipal building, or a part thereof, or any other building, or a part thereof, which is supported or maintained, in whole or in part by or through tax revenues

provided, however, that this section shall not be construed to permit any board of elections to demand and use any tax exempt church property for such purposes without the express consent of the individual church involved, for the purpose of conducting registration and voting for any primary or election, and it may require that the requisitioned premises, or a part thereof, be vacated for these purposes.

If a county board of elections requires that a tax-supported building be used as a voting place, that county board of elections may require that those in control of that building provide parking that is adequate for voters at the precinct, as determined by the county board of elections.

The county board of elections shall inspect each precinct voting place to ascertain how it should be arranged for voting purposes, and shall direct the chief judge and judges of any precinct to define the voting place by roping off the area or otherwise enclosing it or by marking its boundaries. The boundaries of the voting place shall at any point lie no more than 100 feet from each ballot box or voting machine. The space so roped off or enclosed or marked for the voting place may contain area both inside and outside the structure in which registration and voting are to take place."

Section 5.(b) This section becomes effective January 1, 2000.

-- PROVIDING FOR SUPERVISION, ASSISTANCE, AND TRAINING BY THE STATE BOARD OF ELECTIONS FOR MUNICIPAL BOARDS OF ELECTIONS AND PROVIDING FOR REMEDIES.

Section 6.(a) G.S. 163-304 reads as rewritten:

"§ 163-304. State Board of Elections to have jurisdiction over municipal elections and election officials, and to ~~advise~~ advise; emergency and ongoing administration by county board.

(a) Authority and Duty of State Board. -- The State Board of Elections shall have the same authority over municipal elections and election officials as it has over county and State elections and election officials. The State Board of Elections shall advise and assist cities, towns, incorporated villages and special districts, municipal boards of elections, their members and legal officers on the conduct and administration of their elections and registration procedure.

The city council shall provide written notification to the State Board of Elections of the appointment of each member of its municipal board of elections within five days after the appointment. The municipal board of elections and the city council shall provide such other information about the municipal board of elections as the State Board may require. Members of the municipal board of elections and municipal elections officials shall participate in training provided by the State Board pursuant to G.S. 163-82.24. The State Board shall provide the same training, materials, and assistance to municipal boards of elections that it provides to county boards of elections.

The county and municipal boards of elections shall be governed by the same rules for settling controversies with respect to counting

ballots or certification of the returns of the vote in any municipal or special district election as are in effect for settling such controversies in county and State elections.

(b) Emergency Administration if Municipal Board Is Not Appointed. -- If a city council in a city that has elected pursuant to G.S. 163-285 to conduct its own elections has not appointed a municipal board of elections and reported the appointments to the Executive Secretary-Director by March 1 in the year in which the city election is to occur, the Executive Secretary-Director shall notify the city council that, unless a municipal board of elections is appointed and the Executive Secretary-Director notified of its appointment by April 1 of that year, the county board of elections shall be ordered to conduct that city's elections that year on an emergency basis. If the city council does not so appoint and so notify by April 1, the Executive Secretary-Director shall order the county board of elections to conduct the city's elections that year on an emergency basis.

(c) Emergency Administration Due to Serious Violations. -- If a city council or municipal board of elections has committed violations of the applicable portions of this Chapter prior to a city election and those violations are of such magnitude as to give rise to reasonable doubt as to the ability of the municipal board of elections to conduct that election with competence and fairness, the Executive Secretary-Director of the State Board, with the approval of at least four members of the State Board, may order the county board of elections to conduct the remainder of that election on an emergency basis. Before an order is made under this subsection, the city council and municipal board of elections shall be given an opportunity to be heard by the State Board.

(d) Ongoing County Administration. -- The State Board of Elections may designate the county board of elections as the ongoing agency to conduct a city's elections if all the following conditions are met:

- (1) In more than one election conducted by that city either (i) the city's elections have been administered on an emergency basis pursuant to subsection (b) or (c) of this section or (ii) a new election has been ordered because of irregularities in the city's administration of the election.
- (2) The State Board finds that the interest of the residents of the city in fair and competent administration of elections requires that the city not conduct its own elections.
- (3) The city council and municipal board of elections are given an opportunity to be heard before the State Board.
- (4) The State Board by a vote of at least four of its members designates the county board of elections as the ongoing agency to conduct that city's elections.

The city council may not elect to conduct its own elections under G.S. 163-285 until every member of the city council has been elected in a election conducted by the county board of elections after the State Board's designation.

(e) Reimbursement. -- If the county board of elections administers a city's elections pursuant to subsection (b), (c), or (d) of this section,

the city shall reimburse the county board of elections in the manner set forth in G.S. 163-285."

Section 6.(b) This section becomes effective January 1, 2000, except that every city council shall provide to the State Board of Elections by August 1, 1999, a list of the members and supervisor of the municipal board of elections in its municipality. That list shall indicate who is the chair and shall provide addresses and telephone numbers for the members and supervisors.

-- INCREASING MINIMUM COMPENSATION FOR COUNTY ELECTIONS DIRECTORS.

Section 7.(a) G.S. 163-35(c) reads as rewritten:

"(c) Compensation of Directors of Elections. -- Compensation paid to directors of elections in all counties maintaining full-time registration (five days per week) shall be in the form of a salary in an amount recommended by the county board of elections and approved by the Board of County Commissioners and shall be commensurate with the salary paid to directors in counties similarly situated and similar in population and number of registered voters.

~~Beginning July 1, 1991, in any county operating under modified registration PLAN A, B, C, or D, the~~ The Board of County Commissioners in each county, whether or not the county maintains full-time or modified full-time registration, shall compensate the director of elections at a minimum rate of ~~eight~~ twelve dollars ~~(\$8.00)~~ (\$12.00) per hour for hours worked in attendance to his or her duties as prescribed by law, including rules and regulations adopted by the State Board of Elections. In addition, the county shall pay to the director an hourly wage of at least ~~eight~~ twelve dollars ~~(\$8.00)~~ (\$12.00) per hour for all hours worked in excess of those prescribed in rules and regulations adopted by the State Board of Elections, when such additional hours have been approved by the county board of elections and such approval has been recorded in the official minutes of the county board of elections.

In addition to the compensation provided for herein, the director of elections to the county board of elections shall be granted the same vacation leave, sick leave, and petty leave as granted to all other county employees. It shall also be the responsibility of the Board of County Commissioners to appropriate sufficient funds to compensate a replacement for the director of elections when authorized leave is taken."

Section 7.(b) This section becomes effective July 1, 2000.

-- LOWERING THE THRESHOLD FOR A FULL-TIME COUNTY ELECTIONS OFFICE.

Section 8.(a) G.S. 163-36 reads as rewritten:

"§ 163-36. *Modified full-time offices.*

The State Board of Elections shall promulgate rules permitting counties that have fewer than ~~14,001~~ 6,501 registered voters to operate a modified full-time elections office to the extent that the operation of a full-time office is not necessary. Nothing in this section shall preclude

any county from keeping an elections office open at hours consistent with the hours observed by other county offices."

Section 8.(b) This section becomes effective July 1, 2000.

-- PROVIDING FOR GIFTS TO POLITICAL PARTY HEADQUARTERS BUILDING FUNDS.

Section 9.(a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.19B. *Political party headquarters building funds.*

Notwithstanding the provisions of G.S. 163-278.19, a person prohibited by that section from making a contribution may donate to political parties and political parties may accept from such a person money and other things of value donated to a political party headquarters building fund. Donations to the political party headquarters building fund shall be subject to all the following rules:

- (1) The donations solicited and accepted are designated to the political party headquarters building fund.
- (2) Potential donors to that fund are advised that all donations will be exclusively for the political party headquarters building fund.
- (3) The political party establishes a separate segregated bank account into which shall be deposited only donations for the political party headquarters building fund from persons prohibited by G.S. 163-278.19 from making contributions.
- (4) The donations deposited in the separate segregated bank account for the political party headquarters building fund will be spent only to purchase a headquarters building, to construct a headquarters building, to renovate a headquarters building, to pay a mortgage on a headquarters building, or to repay donors if a headquarters building is not purchased, constructed, or renovated. Donations deposited into that account shall not be used for headquarters rent, utilities, or equipment other than fixtures.
- (5) The political party executive committee shall report donations to and spending by a political party headquarters building fund on every report required to be made by G.S. 163-278.9. If a committee is excused from making general campaign finance reports under G.S. 163-278.10A, that committee shall nonetheless report donations in any amount to and spending in any amount by the political party headquarters building fund at the times required for reports in G.S. 163-278.9.

If all the criteria set forth in subdivisions (1) through (5) of this section are complied with, then donations to and spending by a political party headquarters building fund do not constitute contributions or expenditures as defined in G.S. 163-278.6. If those criteria are complied with, then donations may be made to a political party headquarters building fund."

Section 9.(b) This section is effective when this act becomes law.

-- CHANGING THE STATUTE CONCERNING A CANDIDATE'S SIGNATURE ON A FINANCE REPORT TO REFLECT TRADITIONAL PRACTICE.

Section 10.(a) G.S. 163-278.32 reads as rewritten:

"§ 163-278.32. *Statements under oath.*

Any statement required to be filed under this Article shall be signed and certified as true and correct by the individual, media, candidate, treasurer or others required to file it, and shall be verified by the oath or affirmation of the individual, media, candidate, treasurer or others filing the statement, taken before any officer authorized to administer oaths; provided further that the candidate shall certify as true and correct to the best of his knowledge ~~each report the organizational report and appointment of treasurer filed by a treasurer appointed by him or by his~~ for the candidate or the candidate's principal campaign committee."

Section 10.(b) This section is effective when this act becomes law.

Section 11. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 10:42 p.m. on the 5th day of August, 1999.

S.B. 1058

SESSION LAW 1999-427

AN ACT AUTHORIZING THE STATE LICENSING BOARD FOR GENERAL CONTRACTORS TO INCLUDE COMPONENTS OF THE STATE BUILDING CODE IN THE EXAMINATION OFFERED BY THE BOARD AND GRANTING THE BOARD GREATER AUTHORITY WHEN DISCIPLINING LICENSEES WHO VIOLATE THE LAWS RELATED TO GENERAL CONTRACTOR LICENSURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-10(b) reads as rewritten:

"(b) The Board shall conduct an examination, either oral or written, of all applicants for license to ascertain the ability of the applicant to make a practical application of his knowledge of the profession of contracting, under the classification contained in the application, and to ascertain the qualifications of the applicant in reading plans and specifications, knowledge of relevant matters contained in the North Carolina State Building Code, knowledge of estimating costs, construction, ethics and other similar matters pertaining to the contracting business and knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the State of North Carolina relating to contractors, construction and liens. If the results of the examination of the applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general contractor in

the State of North Carolina, as provided in ~~said~~ the certificate, which may be limited into five classifications as the common use of the terms are known -- that ~~is, is:~~

- (1) Building contractor, which shall include private, public, commercial, industrial and residential buildings of all ~~types; types.~~
- (1a) Residential contractor, which shall include any general contractor constructing only residences which are required to conform to the residential building code adopted by the Building Code Council pursuant to ~~G.S. 143-138; G.S. 143-138.~~
- (2) ~~Highway contractor; contractor.~~
- (3) Public utilities contractors, which shall include those whose operations are the performance of construction work on the following subclassifications of facilities:
 - a. Water and sewer mains and water service lines and house and building sewer lines as defined in the North Carolina State Building Code, and water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping ~~stations; stations.~~
 - b. ~~Water and wastewater treatment facilities and appurtenances thereto; thereto.~~
 - c. Electrical power transmission facilities, and primary and secondary distribution facilities ahead of the point of delivery of electric service to the ~~customer; customer.~~
 - d. ~~Public communication distribution facilities; and facilities.~~
 - e. Natural gas and other petroleum products distribution facilities; provided the General Contractors Licensing Board may issue license to a public utilities contractor limited to any of the above subclassifications for which the general contractor ~~qualifies, and qualifies.~~
- (4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the State of North Carolina.

Public utilities contractors constructing water service lines and house and building sewer lines as provided in (3)a above shall terminate said lines at a valve, box, meter, or manhole or cleanout at which the facilities from the building may be connected."

Section 2. G.S. 87-11(a) reads as rewritten:

"(a) The Board shall have the power to ~~revoke the certificate of license of any general contractor licensed hereunder who~~ refuse to

issue or renew or revoke, suspend, or restrict a certificate of license or to issue a reprimand or take other disciplinary action if a general contractor licensed under this Article is found guilty of any fraud or deceit in obtaining a license, or gross negligence, ~~incompetency~~ ~~incompetency~~, or misconduct in the practice of his or her profession, or willful violation of any ~~provisions~~ provision of this Article. The Board shall also have the power to revoke, suspend, or otherwise restrict the ability of any person to act as a qualifying party for a license to practice general contracting, as provided in G.S. 87-10(c), for any copartnership, corporation or any other organization or combination, if that person committed any act in violation of the provisions of this section and the Board may take disciplinary action against the individual license held by that person.

(a) Any person may prefer charges of ~~such~~ fraud, deceit, ~~negligence~~ ~~negligence~~, or misconduct against any general contractor licensed ~~hereunder; such~~ under this Article. The charges shall be in writing and sworn to by the complainant and submitted to the Board. ~~Such~~ The charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter 150B of the General Statutes."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:44 p.m. on the 5th day of August, 1999.

S.B. 292

SESSION LAW 1999-428

AN ACT TO PROVIDE THAT CRIMINAL CASES IN SUPERIOR COURT SHALL BE CALENDARED PURSUANT TO ADMINISTRATIVE SETTINGS.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-49.4. Superior court criminal case docketing.

(a) Criminal Docketing. -- Criminal cases in superior court shall be calendared by the district attorney at administrative settings according to a criminal case docketing plan developed by the district attorney for each superior court district in consultation with the superior court judges residing in that district and after opportunity for comment by members of the local bar. Each criminal case docketing plan shall, at a minimum, comply with the provisions of this section, but may contain additional provisions not inconsistent with this section.

(b) Administrative Settings. -- An administrative setting shall be calendared for each felony within 60 days of indictment or service of notice of indictment if required by law, or at the next regularly

scheduled session of superior court if later than 60 days from indictment or service if required. At an administrative setting:

- (1) The court shall determine the status of the defendant's representation by counsel;
- (2) After hearing from the parties, the court shall set deadlines for the delivery of discovery, arraignment if necessary, and filing of motions;
- (3) If the district attorney has made a determination regarding a plea arrangement, the district attorney shall inform the defendant as to whether a plea arrangement will be offered and the terms of any proposed plea arrangement, and the court may conduct a plea conference if supported by the interest of justice;
- (4) The court may hear pending pretrial motions, set such motions for hearing on a date certain, or defer ruling on motions until the trial of the case; and
- (5) The court may schedule more than one administrative setting if requested by the parties or if it is found to be necessary to promote the fair administration of justice in a timely manner.

Whenever practical, administrative settings shall be held by a superior court judge residing within the district, but may otherwise be held by any superior court judge.

If the parties have not otherwise agreed upon a trial date, then upon the conclusion of the final administrative setting, the district attorney shall announce a proposed trial date. The court shall set that date as the tentative trial date unless, after providing the parties an opportunity to be heard, the court determines that the interests of justice require the setting of a different date. In that event, the district attorney shall set another tentative trial date during the final administrative setting. The trial shall occur no sooner than 30 days after the final administrative setting, except by agreement of the State and the defendant.

Nothing in this section precludes the disposition of a criminal case by plea, deferred prosecution, or dismissal prior to an administrative setting.

(c) Definite Trial Date. -- When a case has not otherwise been scheduled for trial within 120 days of indictment or of service of notice of indictment if required by law, then upon motion by the defendant at any time thereafter, the senior resident superior court judge, or a superior court judge designated by the senior resident superior court judge, may hold a hearing for the purpose of establishing a trial date for the defendant.

(d) Venue for Administrative Settings. -- Venue for administrative settings may be in any county within the district when necessary to comply with the terms of the criminal case docketing plan. The presence of the defendant is only required for administrative settings held in the county where the case originated.

(e) Setting and Publishing of Trial Calendar. -- No less than 10 working days before cases are calendared for trial, the district attorney shall publish the trial calendar. The trial calendar shall schedule the cases in the order in which the district attorney anticipates they will be called for trial and should not contain cases that the district attorney does not reasonably expect to be called for trial. In counties in which multiple sessions of court are being held, the district attorney may publish a trial calendar for each session of court.

(f) Order of Trial. -- The district attorney, after calling the calendar and determining cases for pleas and other disposition, shall announce to the court the order in which the district attorney intends to call for trial the cases remaining on the calendar. Deviations from the announced order require approval by the presiding judge if the defendant whose case is called for trial objects; but the defendant may not object if all the cases scheduled to be heard before the defendant's case have been disposed of or delayed with the approval of the presiding judge or by consent of the State and the defendant. A case may be continued from the trial calendar only by consent of the State and the defendant or upon order of the presiding judge or resident superior court judge for good cause shown. The district attorney, after consultation with the parties, shall schedule a new trial date for cases not reached during that session of court.

(g) Nothing in this section shall be construed to deprive any victim of the rights granted under Article I, Section 37 of the North Carolina Constitution and Article 46 of Chapter 15A of the General Statutes.

(h) Nothing in this section shall be construed to affect the authority of the court in the call of cases calendared for trial."

Section 2. G.S. 7A-49.3 is repealed.

Section 3. G.S. 7A-61 reads as rewritten:

"§ 7A-61. Duties of district attorney.

The district attorney shall prepare the trial dockets, prosecute in a timely manner in the name of the State all criminal actions and infractions requiring prosecution in the superior and district courts of his prosecutorial district, advise the officers of justice in his district, and perform such duties related to appeals to the Appellate Division from his district as the Attorney General may require. Effective January 1, 1971, the district attorney shall also represent the State in juvenile cases in which the juvenile is represented by an attorney. Each district attorney shall devote his full time to the duties of his office and shall not engage in the private practice of law."

Section 4. This act becomes effective January 1, 2000.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

Became law upon approval of the Governor at 10:46 p.m. on the 5th day of August, 1999.

S.B. 255

SESSION LAW 1999-429

AN ACT TO CLARIFY STATE LAW REQUIRING STATE AGENCIES TO REDUCE THE NUMBER OF MENUS ON AUTOMATED PHONE SYSTEMS, TO REQUIRE ALL STATE AGENCIES TO INCLUDE THE AGENCY TELEPHONE NUMBER ON AGENCY LETTERHEAD, AND TO REQUIRE STATE AGENCIES TO REPORT ON THEIR COMPLIANCE WITH THIS ACT.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1997-351 reads as rewritten:

"Section 2. State agency telephone systems routing calls to multiple extensions shall be reprogrammed by September 1, 1997, to minimize the number of menus that a caller must go through to reach the desired extension, and to allow the caller to reach an attendant or operator after accessing not more than two menus during normal business hours. As used in this section, the term 'menu' refers to the first point in the call at which the caller is asked to choose from two or more options, regardless of whether that choice is referred to as a menu, router, or other term within the telephone industry itself.

This act shall be implemented by State agencies with existing personnel at no additional cost to the State."

Section 2. All State agencies shall include the agency's telephone number or numbers in a prominent place on all agency letterhead.

Section 3. Each State agency shall report in writing to the General Assembly by October 1, 1999, on that agency's compliance with the provisions of S.L. 1997-351, as amended by Section 1 of this act, and with the provisions of Section 2 of this act. Each report shall be submitted to the Joint Legislative Commission on Governmental Operations. The report shall specifically state whether that agency's telephone system and letterhead is in compliance with the provisions of this act and, if not, shall state any reasons for that noncompliance. The report shall also provide information on the volume of calls received by that agency and the number of attendants or operators available to take those calls.

Section 4. This act is effective when it becomes law. Section 2 of this act applies to all letterhead purchased or produced on or after September 1, 1999.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 10:48 p.m. on the 5th day of August, 1999.

S.B. 732

SESSION LAW 1999-430

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF CHIROPRACTIC EXAMINERS TO ASSESS LICENSEES CERTAIN COSTS AND LIMITING THE OWNERSHIP OF CHIROPRACTIC PRACTICES TO PERSONS LICENSED AS CHIROPRACTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-154 is amended by adding a new subsection to read:

"(c) If a licensee is found guilty in a contested case arising under subsection (b) of this section, the Board may assess the licensee the reasonable cost of the hearing held to make such a determination if the Board finds that the licensee's defense at the hearing was dilatory or not asserted in good faith."

Section 2. Article 8 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"§ 90-157.3. Ownership of chiropractic practices limited."

(a) Each partner in a partnership that is engaged in the practice of chiropractic shall be licensed under this Article.

(b) Each general partner in a limited partnership that is engaged in the practice of chiropractic and each limited partner who takes part in the control of the practice shall be licensed under this Article.

(c) The provisions of Chapter 55B of the General Statutes shall apply to all business corporations organized under Chapter 55 of the General Statutes and engaged in the practice of chiropractic."

Section 3. Section 1 of this act is effective when it becomes law. Section 2 of this act becomes effective January 1, 2000.

In the General Assembly read three times and ratified this the 13th day of July, 1999.

Became law upon approval of the Governor at 10:50 p.m. on the 5th day of August, 1999.

S.B. 437

SESSION LAW 1999-431

AN ACT TO APPOINT PERSONS TO VARIOUS PUBLIC OFFICES UPON THE RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE OR THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND TO MAKE CHANGES IN STATUTES RELATING TO APPOINTMENTS TO PUBLIC OFFICE.

The General Assembly of North Carolina enacts:

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the President Pro Tempore of the Senate; and

Whereas, the President Pro Tempore of the Senate has made recommendations;

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments to public offices upon the recommendation of the Speaker of the House of Representatives; and

Whereas, the Speaker of the House of Representatives has made recommendations; Now, therefore,

PART I. PRESIDENT PRO TEMPORE'S RECOMMENDATIONS

Section 1.1. Richard N. Taylor of Craven County is appointed to the Wireless 911 Board for a term expiring June 30, 2002. Belinda Gurkins of Pitt County is appointed to the Wireless 911 Board for a term expiring June 30, 2002, to fill the unexpired term of Russell Bass.

Section 1.2. Dr. Donald D'Alessandro of Mecklenburg County is appointed to the North Carolina Board of Athletic Trainer Examiners for a term expiring July 31, 2001.

Section 1.3. John Phillips of Wake County is appointed to the North Carolina Board for Licensing of Soil Scientists for a term expiring June 30, 2002.

Section 1.4. David C. Smith of Durham County is appointed to the Board of Trustees of the North Carolina School of Science and Mathematics for a term expiring June 30, 2003.

Section 1.5. Tommy Jenkins of Macon County is appointed to the Western North Carolina Regional Economic Development Commission for a term expiring June 30, 2003, to fill the unexpired term of Juanita Dixon. William J. Williamson, Jr. of Watauga County, David Ed Henson of Macon County, and David Huskins of McDowell County are appointed to the Western North Carolina Regional Economic Development Commission for terms expiring June 30, 2003.

Section 1.6. Bobby Owens is appointed to the Roanoke Island Commission for a term expiring September 30, 2000. Joanne Williams and Gus Granitzki of Dare County are appointed to the Roanoke Island Commission for terms expiring September 30, 1999.

Section 1.7. Mayor J. B. Evans of Columbus County is appointed to the Criminal Justice Information Network Governing Board for a term expiring June 30, 2003.

Section 1.8. Bob Yanko of Gaston County, William Womble of Wake County, Patricia G. Garrett of Mecklenburg County, and William C. Fitzgerald of Scotland County are appointed to the Board of Directors of the North Carolina Housing Finance Agency for terms expiring June 30, 2001.

Section 1.9. Jay Burrus of Dare County, Susan Eaves of Richmond County, and C. Lorance Henderson of Burke County are appointed to the Board of Directors of the North Carolina Partnership for Children, Inc., for terms expiring January 1, 2002.

Section 1.10. John Edward Pechmann of Cumberland County, Eugene Price of Wayne County, and Russell Mohn Hull, Jr. of

Pasquotank County are appointed to the Wildlife Resources Commission for terms expiring April 24, 2001.

Section 1.11. Michael Weisel of Wake County and Thomas P. Dillion of Union County are appointed to the Board of Directors of the North Carolina Railroad for terms expiring June 30, 2001. Robert F. Bleeker of Cumberland County is appointed to the Board of Directors of the North Carolina Railroad for a term expiring June 30, 2003.

Section 1.12. Dr. Zebedee Taylor of Washington County, Emily Moore of Lenoir County, Nancy McKeel, George Kerns, and Richard Clark of Buncombe County, Bobby Bollinger of Mecklenburg County, and Joanne Jeffries of Hertford County are appointed to the Governor's Advocacy Council for Persons with Disabilities for terms expiring June 30, 2001.

Section 1.13. Douglas A. Fox of New Hanover County is appointed to the North Carolina State Ports Authority for a term expiring June 30, 2000. John Emrich of Guilford County is appointed to the North Carolina State Ports Authority for a term expiring June 30, 2001.

Section 1.14. Marsha H. Jordan of Lincoln County is appointed to the North Carolina Real Estate Commission for a term expiring July 31, 2002.

Section 1.15. John K. Gallaher, Sr. of Forsyth County is appointed to the Crime Victims Compensation Commission for a term expiring June 30, 2001.

Section 1.16. Ben Berry and Elsie Pugh of Pasquotank County and Charlie Shaw of Chowan County are appointed to the Northeastern North Carolina Regional Economic Development Commission for terms expiring June 30, 2001.

Section 1.17. Arthur H. Keeney, III of Hyde County is appointed to the State Banking Commission for a term expiring March 31, 2003.

Section 1.18. Eleanor Beasley of Gaston County is appointed to the Governor's Advisory Council on Aging for a term expiring June 30, 2003.

Section 1.19. Robert Epting of Orange County and Robert G. Ray of Jackson County are appointed to the Environmental Management Commission for terms expiring June 30, 2001.

Section 1.20. Garland Wood of Wake County is appointed to the Acupuncture Licensing Board for a term expiring June 30, 2002.

Section 1.21. George Daniel of Caswell County and Wendell Murphy of Duplin County are appointed to the Centennial Authority for a term expiring June 30, 2003.

Section 1.22. Ralph Brown of Iredell County is appointed to the Alarm Systems Licensing Board for a term expiring June 30, 2002.

Section 1.23. Henry E. Faircloth of Sampson County is appointed to the North Carolina Appraisal Board for a term expiring June 30, 2002.

Section 1.24. Willy Stewart of Durham County is appointed to the State Building Commission for a term expiring June 30, 2002.

Section 1.25. Anita C. McCorkle of Mecklenburg County and Rebekah Beerbower of Catawba County are appointed to the Child Care Commission for terms expiring June 30, 2001.

Section 1.26. Terry L. Waterfield of Pasquotank County is appointed to the Criminal Justice Education and Training Standards Commission for a term expiring June 30, 2001.

Section 1.27. Shelia Garner of Carteret County is appointed to the North Carolina Board of Dietetics/Nutrition for a term expiring June 30, 2002.

Section 1.28. Robin Adams Anderson of Wake County is appointed to the State Personnel Commission for a term expiring June 30, 2004.

Section 1.29. Jeanne Fenner of Wilson County and Mansfield Elmore of Lee County are appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for terms expiring June 30, 2001.

Section 1.30. Colleen Oliver Lanier of Forsyth County is appointed to the North Carolina Teaching Fellows Commission for a term expiring June 30, 2003.

Section 1.31. Anna McCoy Smith of Forsyth County is appointed to the North Carolina Board of Cosmetic Art Examiners for a term expiring June 30, 2002.

Section 1.32. Ed Kirkpatrick of Lenoir County and Marti Koch of Buncombe County are appointed to the Board of Directors of the North Carolina Center for Nursing for terms expiring June 30, 2002.

Section 1.33. J.W. Jones of Pasquotank County is appointed to the Forestry Advisory Council for a term expiring June 30, 2003.

Section 1.34. Charles A. Hayes of Guilford County is appointed to the North Carolina Global TransPark Authority for a term expiring June 30, 2003.

Section 1.35. David M. Crowe of Guilford County, Adele Vogelhut Bedrick of Mecklenburg County, Stephen A. Harvel of Wilkes County, Thomas M. Kowalick of Moore County, and Karen H. Rectanus and Marianne Wason of Wake County are appointed to the North Carolina Council on the Holocaust for terms expiring June 30, 2001.

Section 1.36. Senator Austin Allran of Catawba County, Senator Jeanne Lucas of Durham County, Senator William Martin of Guilford County, and Dr. Denise Everett of Wake County are appointed to the Advisory Committee on Family-Centered Services for terms expiring June 30, 2001.

Section 1.37. Janet Smith of Davie County is appointed to the Information Resource Management Commission for a term expiring June 30, 2003.

Section 1.38. Roger R. Pierce of Jackson County is appointed to the North Carolina Home Inspector Licensure Board for a term expiring July 1, 2003.

Section 1.39. James D. Kennedy, Jr. of Forsyth County is appointed to the North Carolina Code Officials Qualification Board for a term expiring June 30, 2003.

Section 1.40. Wanda Boyette of Sampson County is appointed to the North Carolina Nursing Scholars Commission for a term expiring June 30, 2003.

Section 1.41. Troy Boyd of Pasquotank County and Eddie Holbrook of Cleveland County are appointed to the North Carolina Parks and Recreation Authority for terms expiring June 30, 2001.

Section 1.42. Anne Coan, Douglas E. Howey, and Bill Weatherspoon of Wake County, Thomas Mehder of Mecklenburg County and Keith Saltrick of Forsyth County are appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for terms expiring June 30, 2001.

Section 1.43. Terry Wheeler of Dare County is appointed to the Property Tax Commission for a term expiring June 30, 2003.

Section 1.44. Drew F. King, Sr. of Durham County is appointed to the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan for a term expiring June 30, 2001.

Section 1.45. Wayne L. Lofton of New Hanover County and Anthony M. Copeland of Wake County are appointed to the North Carolina Agency for Public Telecommunications for terms expiring June 30, 2001.

Section 1.46. Beverly McCracken of Guilford County is appointed to the Board of Trustees of the University of North Carolina Center for Public Television for a term expiring June 30, 2001.

Section 1.47. John Arrowood of Mecklenburg County, Jim Funderburke of Gaston County, David Ray Twiddy of Chowan County and Laura Devan of Cumberland County are appointed to the Rules Review Commission for terms expiring June 30, 2001.

Section 1.48. Dr. Larry W. Watson of Wake County is appointed to the North Carolina Board of Science and Technology for a term expiring June 30, 2001.

Section 1.49. Russell H. Langley of Dare County is appointed to the North Carolina Seafood Industrial Park Authority for a term expiring June 30, 2001.

Section 1.50. J. David Jameson of Cumberland County and Dr. Delilah Blanks of Bladen County are appointed to the Southeastern North Carolina Regional Economic Development Commission for terms expiring June 30, 2003.

Section 1.51. Christie K. Mabry of Wake County and Althea Calloway of Mecklenburg County are appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for terms expiring June 30, 2001.

Section 1.52. Louise F. McColl of New Hanover County and Rebecca R. Smothers of Guilford County are appointed to the Board of Transportation for terms expiring June 30, 2001.

Section 1.53. Mona Alexander of Gaston County and Caroline Pearce of Dare County are appointed to the North Carolina Teacher Academy Board of Trustees for terms expiring June 30, 2003.

Section 1.54. John H. Cilley IV of Catawba County is appointed to the Board of Trustees Teachers' and State Employees' Retirement System for a term expiring June 30, 2001.

PART II. SPEAKER'S RECOMMENDATIONS

Section 2.1. Susan Goldston of Forsyth County is appointed to the Acupuncture Licensing Board for a term expiring June 30, 2002.

Section 2.2. Janelle Tuckmantel of Wake County and Dwayne Durham of Henderson County are appointed to the North Carolina Board of Athletic Trainer Examiners for terms expiring June 30, 2002.

Section 2.3. Bruce Ethridge of Carteret County is appointed to the North Carolina Bridge Authority for a term expiring June 30, 2003.

Section 2.4. B.T. Bryson of Henderson County is appointed to the North Carolina Appraisal Board for a term expiring June 30, 2002.

Section 2.5. Frank Dunn of Mecklenburg County is appointed to the State Banking Commission for a term expiring June 30, 2003.

Section 2.6. Cleve Paul of Wayne County and Norman Whitaker of Durham County are appointed to the State Building Commission for terms expiring June 30, 2001.

Section 2.7. Ray Rouse of Wayne County and Steve Stroud of Wake County are appointed to the Centennial Authority for terms expiring June 30, 2003.

Section 2.8. Robert C. Lennon of Craven County and Susan T. Law of Guilford County are appointed to the Child Care Commission for terms expiring June 30, 2001.

Section 2.9. Eugene Alligood of Mecklenburg County is appointed to the State Board of Chiropractic Examiners for a term expiring June 30, 2001.

Section 2.10. Charles G. England of McDowell County is appointed to the North Carolina Code Officials Qualification Board for a term expiring June 30, 2003.

Section 2.11. Gary Eichelberger of Wake County is appointed to the Crime Victims Compensation Commission for a term expiring June 30, 2003.

Section 2.12. Charles P. Farris, Jr. of Wilson County is appointed to the North Carolina Criminal Justice Education and Training Standards Commission for a term expiring June 30, 2001.

Section 2.13. Ortharine Sansbury of Cumberland County and Louis Blanton of Cleveland County are appointed to the Criminal Justice Information Network Governing Board for terms expiring June 30, 2003.

Section 2.14. James Kirkpatrick of Guilford County is appointed to the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan for a term expiring June 30, 2001.

Section 2.15. Dr. Barbara Ann Hughes of Wake County is appointed to the North Carolina Board of Dietetics/Nutrition for a term expiring June 30, 2002.

Section 2.16. Barbara Davis of Buncombe County is appointed to the Dispute Resolution Commission for a term expiring June 30, 2003.

Section 2.17. Richard Pierce of New Hanover County, Laura Thompson and Angela McCants of Wake County, Nancy McKeel of Buncombe County, Robert Smith of Pitt County, Pat King of Rockingham County, and James Wells of Guilford County are appointed to the Governor's Advocacy Council for Persons with Disabilities for terms expiring June 30, 2001.

Section 2.18. Anne Barnes of Orange County and Don Abernethy of Catawba County are appointed to the Environmental Management Commission for terms expiring June 30, 2001.

Section 2.19. Margie Tate of Mecklenburg County is appointed to the Advisory Committee on Family-Centered Services for a term expiring June 30, 2003.

Section 2.20. Barbara Kornegay of Wayne County and Dr. E. Douglas Kearney, Jr. are appointed to the North Carolina Global TransPark Authority for terms expiring June 30, 2003.

Section 2.21. Dr. Scott Edwards of Hertford County is appointed to the State Health Plan Purchasing Alliance Board for a term expiring June 30, 2003.

Section 2.22. William R. Schultz of Wake County is appointed to the North Carolina Home Inspector Licensure Board for a term expiring June 30, 2003.

Section 2.23. Douglas R. Bebber and Bill Oglesby of Buncombe County, Paul Jaber of Nash County, and Leslie Bevacqua of Wake County are appointed to the Board of Directors of the North Carolina Housing Finance Agency for terms expiring June 30, 2001.

Section 2.23A. Joan Myers of Wake County is appointed to the Information Resource Management Commission for a term expiring June 30, 2003.

Section 2.24. Floyd McCullough of Wayne County and Wymene Valand of Wake County are appointed to the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services for terms expiring June 30, 2001.

Section 2.25. Suzanne Freeman of Mecklenburg County is appointed to the Board of Directors of the North Carolina Center for Nursing for a term expiring June 30, 2002.

Section 2.26. Fred Yates of Hertford County, Edmond Buckman of Beaufort County, and G.B. Warner of Pasquotank County are appointed to the Northeastern North Carolina Regional Economic Development Commission for terms expiring June 30, 2003.

Section 2.27. Donna White of Johnston County is appointed to the North Carolina Nursing Scholars Commission for a term expiring June 30, 2003.

Section 2.28. Russell Robinson, III of Guilford County and Dr. Kenneth Sadler of Forsyth County are appointed to the North Carolina Parks and Recreation Authority for terms expiring June 30, 2001.

Section 2.29. Phyllis Lynch of Mecklenburg County is appointed to the Private Protective Services Board for a term expiring June 30, 2002.

Section 2.30. Wade Wilmoth of Watauga County is appointed to the Property Tax Commission for a term expiring June 30, 2001.

Section 2.31. Sue Russell of Orange County, Dr. Joe Haas of Mecklenburg County, and Swanson Richards of Surry County are appointed to the Board of Directors of the North Carolina Partnership for Children, Inc., for terms expiring October 30, 2002.

Section 2.32. Lloyd Williams, Jr. of Cleveland County, Al Dorsett of Guilford County, David Knight of Wake County, and Bennie Gupton of Franklin County are appointed to the North Carolina Petroleum Underground Storage Tank Funds Council for terms expiring June 30, 2001.

Section 2.33. Gilbert Baccus of Perquimans County is appointed to the North Carolina Seafood Industrial Park Authority for a term expiring June 30, 2001.

Section 2.34. H. Spaulding Craft of Carteret County is appointed to the North Carolina State Ports Authority for a term expiring June 30, 2001.

Section 2.35. Henry Kluttz of Rowan County is appointed to the North Carolina Principal Fellows Commission for a term expiring June 30, 2003.

Section 2.36. Joseph Kluttz of Stanly County is appointed to the Public Officers and Employees Liability Insurance Commission for a term expiring June 30, 2001.

Section 2.37. David Woodard of Wake County and Robert Griffin of Lenoir County are appointed to the Board of Directors of the North Carolina Railroad for terms expiring June 30, 2003. Sharman Thornton of Mecklenburg County is appointed to the Board of Directors of the North Carolina Railroad for a term expiring June 30, 2001.

Section 2.38. Louisa Dollard of Dare County is appointed to the Roanoke Island Commission for a term expiring October 1, 2000, to fill the unexpired term of Dr. Paul Mericle.

Section 2.39. George Robinson of Caldwell County, Walter B. Futch of Brunswick County and Jennie Hayman of Wake County are

appointed to the Rules Review Commission for terms expiring June 30, 2001.

Section 2.40. Carol Hughes and Michael Egues of Mecklenburg County are appointed to the Board of Trustees of the North Carolina School of Science and Mathematics for terms expiring June 30, 2003.

Section 2.41. Robert Annechiarico of Forsyth County is appointed to the North Carolina Board of Science and Technology for a term expiring June 30, 2001.

Section 2.42. Alphonzo McRae of Robeson County and Chandler Worley of Columbus County are appointed to the Southeastern North Carolina Farmers Market Commission for terms expiring June 30, 2003.

Section 2.43. Wyatt Upchurch of Hoke County and Gene Miller of New Hanover County are appointed to the Southeastern North Carolina Regional Economic Development Commission for terms expiring June 30, 2003.

Section 2.44. Edward Goode of Mecklenburg County is appointed to the Board of Trustees of the Teachers' and State Employees' Retirement System for a term expiring June 30, 2001.

Section 2.45. Franz Holscher of Gaston County is appointed to the North Carolina Teaching Fellows Commission for a term expiring June 30, 2003.

Section 2.46. Dennis Rash and Lisa Crutchfield of Mecklenburg County are appointed to the Board of Transportation for terms expiring June 30, 2001.

Section 2.47. Ruth Cook of Wake County is appointed to the Board of Trustees of the University of North Carolina Center for Public Television for a term expiring June 30, 2001.

Section 2.48. Carol Rahea of Union County and Annette Myers of Granville County are appointed to the Watershed Protection Advisory Council for terms expiring June 30, 2001.

Section 2.49. James Thompson of Gaston County is appointed to the Well Contractors Certification Commission for a term expiring June 30, 2000, to fill the unexpired term of Peter Beebe.

Section 2.50. Ann Robinson of Caldwell County, Tracy Walker of Wilkes County, Mark Vannoy of Ashe County, and Gene Ellison of Buncombe County are appointed to the Western North Carolina Regional Economic Development Commission for terms expiring June 30, 2003.

Section 2.51. Bobby Purcell of Wake County, Charles Bennett of Mecklenburg County and Troy Boyd of Pasquotank County are appointed to the Wildlife Resources Commission for terms expiring June 30, 2001.

Section 2.52. Stewart Smith of Brunswick County is appointed to the North Carolina Board for Licensing of Soil Scientists for a term expiring June 30, 2002.

Section 2.53. Herb Crenshaw of Wake County is appointed to the North Carolina Agency for Public Telecommunications for a term expiring June 30, 2001.

Section 2.54. George Garner of Duplin County is appointed to the North Carolina Sheriffs Education and Training Standards Commission for a term expiring June 30, 2001.

Section 2.55. Trudy Mitchell and Sandy Babb of Wake County are appointed to the Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan for terms expiring June 30, 2001.

PART IIA. MINORITY AND MAJORITY LEADERS

Section 2A.1. Kathy Manning of Guilford County is appointed to the Board of Directors of the North Carolina Partnership for Children, Inc., upon the recommendation of the Majority Leader of the Senate for a term expiring January 1, 2002.

Paige Holland of Wake County is appointed to the Board of Directors of the North Carolina Partnership for Children, Inc., upon the recommendation of the Minority Leader of the Senate for a term expiring January 1, 2002.

Charisse Johnson of Wayne County is appointed to the Board of Directors of the North Carolina Partnership for Children, Inc., upon the recommendation of the Majority Leader of the House of Representatives for a term expiring January 1, 2002.

Dr. Bryan Brooks of Davidson County is appointed to the Board of Directors of the North Carolina Partnership for Children, Inc., upon the recommendation of the Minority Leader of the House of Representatives for a term expiring January 1, 2002.

PART III. STATUTORY CHANGES

-- ROANOKE ISLAND HISTORICAL ASSOCIATION

Section 3.1. G.S. 143-200 reads as rewritten:

"§ 143-200. *Members of board of directors; terms; appointment.*

The governing body of said Association shall be a board of directors consisting of the Governor of the State, the Attorney General and the Secretary of Cultural Resources as ex officio members, and the following 21 members: J. Spencer Love, Greensboro; Miles Clark, Elizabeth City; Mrs. Richard J. Reynolds, Winston-Salem; D. Hiden Ramsey, Asheville; Mrs. Charles A. Cannon, Concord; Dr. Fred Hanes, Durham; Mrs. Frank P. Graham, Chapel Hill; Bishop Thomas C. Darst, Wilmington; W. Dorsey Pruden, Edenton; John A. Buchanan, Durham; William B. Rodman, Jr., Washington; J. Melville Broughton, Raleigh; Melvin R. Daniels, Manteo; Paul Green, Chapel Hill; Samuel Selden, Chapel Hill; R. Bruce Etheridge, Manteo; Theodore S. Meekins, Manteo; Roy L. Davis, Manteo; M. K. Fearing, Manteo; A. R. Newsome, Chapel Hill. The members of said board of directors herein named other than the ex officio members, shall serve for a term of ~~two~~ three years and until their successors are appointed. Appointments thereafter shall be made by

the membership of the Association in regular annual meeting or special meeting called for such purpose. In the event the Association through its membership should fail to make such appointments, then the appointments shall be made by the Governor of the State. If a vacancy occurs between annual meetings, the board of directors may fill the vacancy until the next annual meeting. All vacancies occurring on the board of directors not filled by the board of directors within 30 days of the vacancy shall be filled by the Governor of the State."

--FIRST FLIGHT CENTENNIAL COMMISSION

Section 3.2.(a) G.S. 143-640(c) reads as rewritten:

"(c) Membership. -- The Commission shall consist of ~~26~~ 28 members, as follows:

- (1) Four persons appointed by the Governor.
- (2) ~~Four~~ Five persons appointed by the President Pro Tempore of the Senate.
- (3) ~~Four~~ Five persons appointed by the Speaker of the House of Representatives.
- (4) The following persons or their designees, ex officio:
 - a. The Governor.
 - b. The President Pro Tempore of the Senate.
 - c. The Speaker of the House of Representatives.
 - d. The United States Senators from this State.
 - e. The member of the United States House of Representatives for the Third Congressional District.
 - f. The Governor of the State of Ohio.
 - g. The Secretary of the Department of Cultural Resources.
 - h. The Superintendent of the Cape Hatteras National Seashore of the United States National Park Service.
 - i. The chair of the Centennial of Flight Commemoration Commission.
 - j. The President of the First Flight Society.
 - k. The chair of the Dare County Board of Commissioners.
 - l. The Mayor of the Town of Kill Devil Hills.
 - m. The chair of the Dare County Tourism Board.

The members appointed to the First Flight Centennial Commission shall be chosen from among individuals who have the ability and commitment to promote and fulfill the purposes of the Commission, including individuals who have demonstrated expertise in the fields of aeronautics, aerospace science, or history, who have contributed to the development of the fields of aeronautics or aerospace science, or who have demonstrated a commitment to serving the public."

Section 3.2.(b) The initial members appointed under this section shall serve terms expiring June 30, 2001.

--STATE-OWNED RAILROADS

Section 3.3.(a) G.S. 124-6(b) reads as rewritten:

"(b) Notwithstanding subsection (a) of this section, for any railroad company organized as a corporation in which the State is the owner of

all the voting stock and which has trackage in more than two counties, ~~five seven~~ of the members of the Board of Directors shall be appointed by the Governor, ~~two three~~ of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and ~~two three~~ of the members of the Board of Directors shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. ~~Of the Governor's five appointments, three shall be either an investment banker, a person with railroad management experience, a person on an economic development commission whose region contains track of the company, or an attorney with corporate experience. The remaining two shall be at-large members. The Speaker of the House of Representatives shall recommend two at-large members. The President Pro Tempore of the Senate shall recommend two at-large members. The Board of Directors shall consist of nine 13 members. Of the initial members appointed by the Governor, three shall be appointed for terms of four years and two four shall be appointed for terms of two years. Of the initial members recommended to the General Assembly by the Speaker of the House of Representatives, one two shall be appointed for a term terms of four years and one shall be appointed for a term of two years. Of the initial members recommended to the General Assembly by the President Pro Tempore of the Senate, one two shall be appointed for a term terms of four years and one shall be appointed for a term of two years. Thereafter all Board members shall serve four-year terms. The Board shall elect the chairman from among its membership."~~

Section 3.3.(b) This section becomes effective when the railroad company changes its articles of incorporation to increase the size of the board.

--NORTH CAROLINA REAL ESTATE COMMISSION

Section 3.4.(a) G.S. 93A-3(a) reads as rewritten:

"(a) There is hereby created the North Carolina Real Estate Commission, hereinafter called the Commission. The Commission shall consist of nine members, seven members to be appointed by the Governor. Governor, one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, and one member to be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. At least three members of the Commission shall be licensed real estate brokers or real estate salesmen. At least two members of the Commission shall be persons who are not involved directly or indirectly in the real estate or real estate appraisal business. Members of the Commission shall serve three-year terms, so staggered that the terms of two members expire in one year, the terms of two members expire in the next year, and the terms of three members expire in the

third year of each three-year period. The members of the Commission shall elect one of their members to serve as chairman of the Commission for a term of one year. The Governor may remove any member of the Commission for misconduct, incompetency, or willful neglect of duty. The Governor shall have the power to fill all vacancies occurring on the ~~Commission~~. Commission, except vacancies in legislative appointments shall be filled under G.S. 120-122."

Section 3.4.(b) Appointments of the initial members authorized by this section are for terms expiring June 30, 2002.

--JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS

Section 3.5.(a) G.S. 120-74 reads as rewritten:

"§ 120-74. Appointment of members; terms of office.

The Commission shall consist of ~~30~~ 34 members. The President pro tempore of the Senate, the Speaker pro tempore of the House, and the Majority Leader of the Senate and the Speaker of the House shall serve as ex officio members of the Commission. The Speaker of the House of Representatives shall appoint ~~13~~ 15 members from the House. The President pro tempore of the Senate shall appoint ~~13~~ 15 members from the Senate. Vacancies created by resignation or otherwise shall be filled by the original appointing authority. Members shall serve two-year terms beginning and ending on January 15 of the odd-numbered ~~years, except that initial appointments shall begin on July 1, 1975,~~ years. Members shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission. ~~The terms of the initial members of the Commission shall expire January 15, 1977."~~

Section 3.5.(b) The initial terms of the four additional members of the Joint Legislative Commission on Governmental Operations that are added to the Commission in subsection (a) of this section shall begin on appointment.

---LEGISLATIVE SERVICES COMMISSION

Section 3.6.(a) G.S. 120-31(a) reads as rewritten:

"(a) The Legislative Services Commission shall consist of the President pro tempore of the Senate, ~~six~~ seven Senators appointed by the President pro tempore of the Senate, the Speaker of the House of Representatives, and ~~six~~ seven Representatives appointed by the Speaker of the House of Representatives. The President pro tempore of the Senate, and the Speaker of the House shall serve until the selection and qualification of their respective successors as officers of the General Assembly. The initial appointive members shall be appointed after the date of ratification of this Article and each shall serve for the remainder of his elective term of office and until his successor is appointed or until he ceases to be a member of the

General Assembly, whichever occurs first. A vacancy in one of the appointive positions shall be filled in the same manner that the vacated position was originally filled, and the person so appointed shall serve for the remainder of the unexpired term of the person whom he succeeds. In the event the office of Speaker becomes vacated, the ~~six~~ seven Representatives shall elect one of themselves to perform the duties of the Speaker as required by this Article. In the event the office of President pro tempore becomes vacated, the ~~six~~ seven Senators shall elect one of themselves to perform the duties of President pro tempore as required by this Article. Members so elevated shall perform the duties required by this Article until a Speaker or a President pro tempore is duly elected by the appropriate house."

Section 3.6.(b) The initial terms of the two additional members of the Legislative Services Commission that are added to the Commission in subsection (a) of this section shall begin on appointment.

-- JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE

Section 3.7.(a) G.S. 120-70.80 reads as rewritten:

"§ 120-70.80. *Creation and membership of Joint Legislative Education Oversight Committee.*

The Joint Legislative Education Oversight Committee is established. The Committee consists of ~~18~~ 20 members as follows:

- (1) ~~Nine~~ Ten members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and
- (2) ~~Nine~~ Ten members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered ~~year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1991 General Assembly~~ year. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment."

Section 3.8.(b) Terms of the additional members authorized by this section expire upon convening of the 2001 Regular Session of the General Assembly.

--STATE BOARD OF CHIROPRACTIC EXAMINERS

Section 3.9. G.S. 90-139 reads as rewritten:

"§ 90-139. *Creation and membership of Board of Examiners.*

(a) The State Board of Chiropractic Examiners is created to consist of ~~seven~~ eight members appointed by the Governor, and General Assembly. ~~Six~~ Seven of the members shall be practicing doctors of chiropractic, who are residents of this State and who have actively practiced chiropractic in the State for at least eight consecutive years immediately preceding their appointments; four of these ~~six~~ seven members shall be appointed by the Governor, and two by the General Assembly in accordance with G.S. 120-121, one each upon the recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives. No more than three members of the Board may be graduates of the same college or school of chiropractic. The other member shall be a person chosen by the Governor to represent the public at large. The public member shall not be a health care provider nor the spouse of a health care provider. For purposes of Board membership, "health care provider" means any licensed health care professional and any agent or employee of any health care institution, health care insurer, health care professional school, or a member of any allied health profession. For purposes of this section, a person enrolled in a program to prepare him to be a licensed health care professional or an allied health professional shall be deemed a health care provider. For purposes of this section, any person with significant financial interest in a health service or profession is not a public member."

Section 4. Unless otherwise provided for in this act, appointments are for terms to begin when this bill becomes law.

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

Became law upon approval of the Governor at 6:30 p.m. on the 9th day of August, 1999.

S.B. 25

SESSION LAW 1999-432

AN ACT TO PROVIDE FOR ATTORNEY REPRESENTATION OF CHILDREN REPRESENTED BY GUARDIAN AD LITEM PROGRAM THROUGHOUT PROCEEDINGS OF THE CASE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-601, as recodified by Section 6 of S.L. 1998-202, reads as rewritten:

"§ 7B-601. *Appointment and duties of guardian ad litem.*

(a) When in a petition a juvenile is alleged to be abused or neglected, the court shall appoint a guardian ad litem to represent the juvenile. When a juvenile is alleged to be dependent, the court may appoint a guardian ad litem to represent the juvenile. The juvenile is a party in all actions under this Subchapter. The guardian ad litem and attorney advocate have standing to represent the juvenile in all actions under this Subchapter where they have been appointed. The

appointment shall be made pursuant to the program established by Article 12 of this Chapter unless representation is otherwise provided pursuant to G.S. 7B-1202 or G.S. 7B-1203. The appointment shall terminate ~~at the end of two years, when the permanent plan has been achieved for the juvenile and approved by the court.~~ The court may reappoint the guardian ad litem pursuant to a showing of good cause upon motion of any party, including the guardian ad litem, or of the court. In every case where a nonattorney is appointed as a guardian ad litem, an attorney shall be appointed in the case in order to assure protection of the juvenile's legal rights ~~through the dispositional phase of the proceedings, and after disposition when necessary to further the best interests of the juvenile, throughout the proceeding.~~ The duties of the guardian ad litem program shall be to make an investigation to determine the facts, the needs of the juvenile, and the available resources within the family and community to meet those needs; to facilitate, when appropriate, the settlement of disputed issues; to offer evidence and examine witnesses at adjudication; to explore options with the court at the dispositional ~~hearing; hearing;~~ to conduct follow-up investigations ~~to insure that the orders of the court are being properly executed; to report to the court when the needs of the juvenile are not being met;~~ and to protect and promote the best interests of the juvenile until formally relieved of the responsibility by the court.

(b) ~~The court may order the department of social services or the guardian ad litem to conduct follow-up investigations to ensure that the orders of the court are being properly executed and to report to the court when the needs of the juvenile are not being met.~~ The court may also authorize the guardian ad litem to accompany the juvenile to court in any criminal action wherein the juvenile may be called on to testify in a matter relating to abuse.

(c) ~~The court may grant the~~ The guardian ad litem has the authority to demand obtain any information or reports, whether or not confidential, that may in the guardian ad litem's opinion be relevant to the case. ~~Neither the physician-patient privilege nor the husband-wife privilege~~ No privilege other than the attorney-client privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:00 p.m. on the 10th day of August, 1999.

S.B. 120

SESSION LAW 1999-433

AN ACT TO INCREASE THE PENALTIES RELATED TO UNDERAGE DRINKING.

Whereas, underage drinking has always been a matter of grave concern for the General Assembly; and

Whereas, Parents Who Care About Underage Drinking in Catawba County became involved and concerned about recent incidences of death and hospitalization due to alcohol poisoning of teens in their county; and

Whereas, studies in North Carolina indicate:

- (1) 40% of North Carolina high school students acknowledge consuming alcohol in the previous 30 days.
- (2) 12% of the State's 11th graders and 18% of the State's 12th graders acknowledge driving a motor vehicle after drinking in the previous 30 days.
- (3) Over 50% of North Carolina high school students who currently drink began drinking by age 13.
- (4) 79% of high school students say that obtaining alcohol by having an adult buy it for them is very easy and 60% say that obtaining alcohol from the homes of other teens or adults is also very easy.
- (5) 66% of North Carolina teens believe their peers are getting alcohol from someone over 21 who is buying it for them, and 80% of the time it is an acquaintance rather than a stranger that buys it.
- (6) 30% of North Carolina teens say they know a store in their community where someone under 21 can easily buy beer.
- (7) 19% of 17 year-olds report they have attended a party where alcohol was supplied by parents.
- (8) In 1996, more than 200 North Carolina youth were hospitalized for primary alcohol-related diagnoses; and

Whereas, young people who begin drinking before age 15 are more than twice as likely to develop alcohol abuse as those who begin drinking at age 21; and

Whereas, underage drinking is a matter of statewide concern; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 18B of the General Statutes is amended by adding a new section to read:

"§ 18B-302A. Penalties for certain offenses related to underage persons.

(a) A violation of G.S. 18B-302(a) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least two hundred fifty dollars

(\$250.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars (\$500.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(b) A violation of G.S. 18B-302(c)(2) is a Class 1 misdemeanor. Notwithstanding the provisions of G.S. 15A-1340.23, if the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least five hundred dollars (\$500.00) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 25 hours of community service, as authorized by G.S. 15A-1343(b1)(6). If the person has a previous conviction of this offense in the four years immediately preceding the date of the current offense, and the court imposes a sentence that does not include an active punishment, the court must include among the conditions of probation a requirement that the person pay a fine of at least one thousand dollars (\$1,000) as authorized by G.S. 15A-1343(b)(9) and a requirement that the person complete at least 150 hours of community service, as authorized by G.S. 15A-1343(b1)(6).

(c) In addition to the punishments imposed under this section, the court may impose the provisions of G.S. 18B-202 and of G.S. 18B-503, 18B-504, and 18B-505."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:03 p.m. on the 10th day of August, 1999.

S.B. 222

SESSION LAW 1999-434

AN ACT TO PROVIDE FOR STATE AND LOCAL GOVERNMENTS TO ACCEPT CREDIT CARDS, CHARGE CARDS, DEBIT CARDS, AND ELECTRONIC FUNDS TRANSFERS FOR PAYMENT OF GOVERNMENT FEES, COSTS, AND DEBTS, TO ALLOW LOCAL GOVERNMENTS TO ACCEPT CREDIT CARDS, CHARGE CARDS, DEBIT CARDS, AND ELECTRONIC FUNDS TRANSFERS FOR PAYMENT OF PROPERTY TAXES, AND TO CREATE THE OFFICE OF INFORMATION TECHNOLOGY TO STRENGTHEN THE MANAGEMENT OF INFORMATION TECHNOLOGY IN STATE GOVERNMENT, ENHANCE ACCOUNTABILITY OF INFORMATION TECHNOLOGY

EXPENDITURES, IMPROVE COST-EFFECTIVE INFORMATION TECHNOLOGY INVESTMENTS, INCREASE INFORMATION TECHNOLOGY EFFICIENCIES, AND CLARIFY AREAS OF RESPONSIBILITY FOR STATE INFORMATION TECHNOLOGY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-86.20 is amended by adding a new subdivision to read:

"(2a) Electronic payment. -- Payment by charge card, credit card, debit card, or by electronic funds transfer as defined in this subsection."

Section 2. G.S. 147-86.10 reads as rewritten:

"§ 147-86.10. Statement of policy.

It is the policy of the State of North Carolina that all agencies, institutions, departments, bureaus, boards, ~~commissions~~ commissions, and officers of the State, whether or not subject to the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, shall devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody which are designed to maximize interest-bearing investment of cash, and to minimize idle and nonproductive cash balances. This policy shall apply to the General Court of Justice as defined in Article IV of the North Carolina Constitution, the public school administrative units, and the community colleges with respect to the receipt, deposit, and disbursement of moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer. This policy shall include the acceptance of electronic payments in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices."

Section 3. G.S. 147-86.22(b) reads as rewritten:

"(b) ~~Credit Card~~ Electronic Payment. -- Notwithstanding the provisions of G.S. 147-86.20 and G.S. 147-86.21, this subsection applies to debts owed a community college, a local school administrative unit, an area mental health, developmental disabilities, and substance abuse authority, and the Administrative Office of the Courts, and to debts payable to or through the office of a clerk of superior court or a magistrate, as well as to debts owed to other State agencies as defined in G.S. 147-86.20. ~~The~~

~~The State Controller may shall~~ establish policies that allow accounts receivable to be payable under certain conditions, with the concurrence of the State Treasurer, by credit card, conditions by electronic payment. These policies shall be established with the concurrence of the State Treasurer. In addition, any policies that apply to debts payable to or through the office of a clerk of superior court or a magistrate shall be established with the concurrence of the Administrative Officer of the Courts. The Administrative Officer of the Courts may also establish policies otherwise authorized by law that

apply to these debts as long as those policies are not inconsistent with the Controller's policies.

A condition of payment by ~~credit card~~ electronic payment is receipt by the appropriate State agency of the full amount of the account receivable owed to the State agency. A debtor who pays by ~~credit card~~ electronic payment ~~shall~~ may be required to ~~include an amount equal to any fee charged by a depository financial institution for processing the credit card payment.~~ pay any fee or charge associated with the use of electronic payment. Fees associated with processing electronic payments may be paid out of the General Fund and Highway Fund if the payment of the fee by the State is economically beneficial to the State and the payment of the fee by the State has been approved by the State Controller and State Treasurer.

The State Controller and State Treasurer shall consult with the Joint Legislative Commission on Governmental Operations before establishing policies that allow accounts receivable to be payable by electronic payment and before authorizing fees associated with electronic payment to be paid out of the General Fund and Highway Fund. A State agency must also consult with the Joint Legislative Commission on Governmental Operations before implementing any program to accept payment under the policies established pursuant to this subsection.

A payment of an account receivable that is made by ~~credit card~~ electronic payment and is not honored by the issuer of the ~~credit card~~ or the financial institution offering electronic funds transfer does not relieve the debtor of the obligation to pay the account receivable."

Section 4. G.S. 147-86.11 reads as rewritten:

"§ 147-86.11. Cash management for the State.

(a) Uniform Plan. -- The State Controller, with the advice and assistance of the State Treasurer, the State Budget Officer, and the State Auditor, shall develop, implement and amend as necessary a uniform statewide plan to carry out the cash management policy for all State agencies. The State Auditor shall report annually to the Advisory Budget Commission and the General Assembly on the implementation of the plan as shown in the audits completed during the prior fiscal year. The State Treasurer shall recommend periodically to the General Assembly any implementing legislation necessary or desirable in the furtherance of the State policy. When used in this section, 'State agency' means any agency, institution, bureau, board, commission or officer of the State; however, except as provided in G.S. 147-86.12, 147-86.13, ~~and 147-86.14,~~ 147-86.14, and 147-86.22, this Article ~~shall~~ does not apply to the agencies, institutions, bureaus, boards, commissions and officers of the General Court of Justice as defined in Article IV of the North Carolina Constitution or to the local school administrative units and community colleges and their officers and employees.

(b) Duties of Auditor. -- The State Auditor pursuant to ~~his~~ authority under G.S. 147-64.6 shall monitor agency compliance with this

Article, and make any comments, suggestions, and recommendations ~~he~~ the Auditor deems advisable to the agencies.

(c) Treasurer's Report. -- The State Treasurer shall publish a quarterly report on all funds in the control or custody of the State Treasurer showing cash balances on hand, investments of cash balances and a comparative analysis of earnings and investment performances.

(d) Earnings on Trust Funds. -- The statewide cash management plan shall provide that any net earnings on invested funds, whose beneficial owner is not the State or a local governmental unit, shall be paid to the beneficial owners of the funds. 'Net earnings' are the amounts remaining after allowance for the cost of administration, management, and operation of the invested funds.

(e) Elements of Plan. -- For moneys received or to be received, the statewide cash management plan shall provide at a minimum that:

- (1) Except as otherwise provided by law, moneys received by employees of State agencies in the normal course of their employment shall be deposited as follows:
 - a. Moneys received in trust for specific beneficiaries for which the employee-custodian has a duty to invest shall be deposited with the State Treasurer under the provisions of G.S. 147-69.3.
 - b. All other moneys received shall be deposited with the State Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.
- (2) Moneys received shall be deposited daily in the form and amounts received, except as otherwise provided by ~~statute~~; statute.
- (3) Moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and ~~deposited~~; deposited.
- (4) Unpaid billings due to a State agency shall be turned over to the Attorney General for collection no more than 90 days after the due date of the billing, except that a State agency need not turn over to the Attorney General unpaid billings of less than five hundred dollars (\$500.00), or (for institutions where applicable) amounts owed by all patients which are less than the federally established deductible applicable to Part A of the Medicare program, and instead may handle these unpaid bills pursuant to agency debt collection ~~procedures; and procedures~~.
- (5) Moneys received in the form of warrants drawn on the State Treasurer shall be deposited by the State' agency directly with the State Treasurer and not through the banking system, unless otherwise approved by the State Treasurer.
- (6) State agencies shall accept payment by electronic payment in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices.

(f) Disbursement Requirements. -- For the disbursement of money, the statewide cash management plan shall provide at a minimum that:

- (1) Moneys deposited with the State Treasurer remain on deposit with the State Treasurer until final disbursement to the ultimate ~~payee;~~ payee.
- (2) The order in which appropriations and other available resources are expended shall be subject to the provisions of G.S. 143-27 regardless of whether the State agency disbursing or expending the moneys is subject to the Executive Budget ~~Act;~~ Act.
- (3) Federal and other reimbursements of expenditures paid from State funds shall be paid immediately to the source of the State ~~funds;~~ funds.
- (4) Billings to the State for goods received or services rendered shall be paid neither early nor late but on the discount date or the due date to the extent ~~practicable;~~ and practicable.
- (5) Disbursement cycles for each agency shall be established to the extent practicable so that the overall efficiency of the warrant disbursement system is maximized while maintaining prompt payment of bills due.

(g) Interest Maximized. -- The interest earnings of the General Fund and Highway Fund shall be maximized to the extent practicable. To this end:

- (1) Interest earnings shall not be allocated to an account by the State Treasurer unless all of the moneys in the account are expressly eligible by law for receiving interest ~~allocations;~~ allocations.
- (2) State officers and employees who received moneys in trust or for investment shall be solely responsible for properly segregating such funds for investment in the manner prescribed by law. The officer or employee charged with the responsibility for these moneys shall be under a duty to segregate the funds in a timely manner. No investment income shall be allocated by the State Treasurer to trust or other investment accounts until properly segregated into investment accounts as provided by law and the rules of the State Treasurer.

(h) New Technologies. -- The statewide cash management plan shall consider new technologies and procedures whenever the technologies and procedures are economically beneficial to the State as a whole. Where the new technologies and procedures may be implemented without additional legislation, the technologies and procedures shall be implemented in the plan.

(i) Penalty. -- A willful or continued failure of an employee paid from State funds or employed by a State agency to follow the statewide cash management plan is sufficient cause for immediate dismissal of the employee."

Section 5. Article 3 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"§ 159-32.1. Electronic payment.

A unit of local government, public hospital, or public authority may, in lieu of payment by cash or check, accept payment by electronic payment as defined in G.S. 147-86.20 for any tax, assessment, rate, fee, charge, rent, interest, penalty, or other receivable owed to it. A unit of local government, public hospital, or public authority may pay any negotiated discount, processing fee, transaction fee, or other charge imposed by a credit card, charge card, or debit card company, or by a third-party merchant bank, as a condition of contracting for the unit's or the authority's acceptance of electronic payment. A unit of local government, public hospital, or public authority may impose the fee or charge as a surcharge on the amount paid by the person using electronic payment."

Section 5.1. G.S. 159-39 is amended by adding a new subsection to read:

"(1) Public hospitals may accept electronic payments pursuant to G.S. 159-32.1."

Section 6. G.S. 105-357(b) reads as rewritten:

"(b) ~~Acceptance of Checks and Credit Cards.~~ Checks and Electronic Payment. -- The tax collector may accept ~~checks, credit cards,~~ checks and electronic payments, as defined in G.S. 147-86.20, ~~or both~~ in payment of ~~taxes.~~ taxes, as authorized by G.S. 159-32.1. Acceptance of a check or ~~credit card~~ electronic payment is at the tax collector's own risk. A tax collector who accepts ~~credit cards in payment~~ electronic payment of taxes may add a fee to each ~~credit card~~ electronic payment transaction to offset the service charge the taxing unit pays for ~~credit card~~ electronic payment service. A tax collector who accepts ~~a credit card~~ electronic payment or check in payment of taxes may issue the tax receipt immediately or withhold the receipt until the check has been collected or the ~~credit card~~ electronic payment invoice has been honored by the issuer.

If a tax collector accepts a check or ~~a credit card~~ an electronic payment and issues a tax receipt and the check is returned unpaid (without negligence on the part of the tax collector in presenting the check for payment) or the ~~credit card~~ electronic payment invoice is not honored by the issuer, the taxes for which the check or ~~credit card~~ electronic payment was given shall be deemed unpaid; the tax collector shall immediately correct the copy of the tax receipt and other appropriate records to show the fact of nonpayment, and shall give written notice by certified or registered mail to the person to whom the tax receipt was issued to return it to the tax collector. After correcting the records to show the fact of nonpayment, the tax collector shall proceed to collect the taxes by the use of any remedies allowed for the collection of taxes or by bringing a civil action on the check or ~~credit card.~~ electronic payment.

A financial institution with which a taxing unit has contracted for receipt of payment of taxes may accept a check in payment of taxes. If the check is honored, the financial institution shall so notify the tax collector, who shall, upon request of the taxpayer, issue a receipt for

payment of the taxes. If the check is returned unpaid, the financial institution shall so notify the tax collector, who shall proceed to collect the taxes by use of any remedy allowed for collection of taxes or by bringing a civil action on the check.

(1) Effect on Tax Lien. -- If the tax collector accepts a check or ~~credit card~~ electronic payment in payment of taxes on real property and issues the receipt, and the check is later returned unpaid or the ~~credit card~~ electronic payment invoice is not honored by the issuer, the taxing unit's lien for taxes on the real property shall be inferior to the rights of purchasers for value and of persons acquiring liens of record for value if the purchasers or lienholders acquire their rights in good faith and without actual knowledge that the check has not been collected or the ~~credit card~~ electronic payment invoice has not been honored, after examination of the copy of the tax receipt in the tax collector's office during the time that record showed the taxes as paid or after examination of the official receipt issued to the taxpayer prior to the date on which the tax collector notified the taxpayer to return the receipt.

(2) Penalty. -- In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving in payment of taxes a check that is returned because of insufficient funds or nonexistence of an account of the drawer is ten percent (10%) of the amount of the check, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty does not apply if the tax collector finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertance, the drawer of the check failed to draw the check on the account that had sufficient funds. This penalty shall be added to and collected in the same manner as the taxes for which the check was given."

Section 7. G.S. 132-1.2 reads as rewritten:

"§ 132-1.2. *Confidential information.*

Nothing in this ~~Article~~ Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information ~~which;~~ that:

(1) Meets all of the following conditions:

(1) a. Constitutes a "trade secret" as defined in ~~G.S. 66-152(3);~~ G.S. 66-152(3).

(2) b. Is the property of a private "person" as defined in ~~G.S. 66-152(2);~~ G.S. 66-152(2).

(3) c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the ~~State; and~~ State.

- (4) d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.
- (2) Reveals an account number for electronic payment as defined in G.S. 147-86.20 and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1."

Section 8. G.S. 143B-472.43 is repealed.

Section 9. Part 16 of Article 10 of Chapter 143B of the General Statutes is amended by adding the following sections to read:

"§ 143B-472.40. Legislative intent.

It is the purpose of this Article to strengthen the management of information technology in State government by enhancing the accountability for expenditures, providing for more cost-effective investments, improving operational efficiencies, and clarifying responsibilities for maximizing benefits from related assets.

"§ 143B-472.40A. Definitions.

As used in this Part:

- (1) 'Distributed information technology assets' means hardware, software, and communications equipment not classified as traditional mainframe-based items, including personal computers, local area networks (LANs), servers, mobile computers, peripheral equipment, and other related hardware and software items.
- (2) 'Information technology' means electronic data processing goods and services and telecommunications goods and services, microprocessors, software, information processing, office systems, any services related to the foregoing, and consulting or other services for design or redesign of information technology supporting business processes.
- (3) 'Information technology portfolio management' means a business-based approach for analyzing and ranking potential technology investments and selecting those investments that are the most cost-effective in supporting the strategic business and program objectives of the agency.
- (4) 'Information technology enterprise management' means a method for managing distributed information technology assets from acquisition through retirement so that total ownership costs (purchase, operation, maintenance, disposal, etc.) are minimized while maximum benefits are realized.
- (5) 'Office' means the Office of Information Technology Services as established in this Part."

Section 10. Part 16 of Article 10 of Chapter 143B of the General Statutes is amended by adding the following sections to read:

"§ 143B-472.50. Office of Information Technology Services; State Chief Information Officer.

(a) There is established the Office of Information Technology Services as a division of the Department of Commerce. The Office may also be referred to as 'ITS'.

(b) The Office of Information Technology Services shall be managed and administered by the State Chief Information Officer who shall be appointed by the Secretary of Commerce. The State Chief Information Officer shall report to the Secretary.

"§ 143B-472.51. Powers and duties of Office of Information Technology Services.

(a) The Office of Information Technology Services has the following powers and duties:

- (1) Procure all information technology for State agencies, except The University of North Carolina and its constituent institutions.
- (2) Submit for approval of the Information Resources Management Commission all rates and fees for common, shared State government-wide technology services provided by the Office.
- (3) Submit for approval of the Information Resources Management Commission recommended State government-wide, enterprise-level policies for information technology.
- (4) Develop standards, procedures, and processes to implement policies approved by the Information Resources Management Commission.
- (5) Assure that State agencies implement and manage information technology portfolio-based management of State information technology resources, in accordance with the direction set by the State Chief Information Officer.
- (6) Assure that State agencies implement and manage information technology enterprise management effort of State government, in accordance with the direction set by the State Chief Information Officer.
- (7) Provide recommendations to the Information Resources Management Commission for its biennial technology strategy and to develop State government-wide technology initiatives to be approved by the Information Resources Management Commission.
- (8) Develop a project management, quality assurance, and architectural review process that adheres to the Information Resources Management Commission's certification program and portfolio-based management initiative.
- (9) Establish and utilize the Information Technology Management Advisory Council to consist of representatives from other State agencies to advise the Office on information technology business management and technology matters.

(b) Other State agencies and local governmental entities may use the information technology programs, services, or contracts offered by the Office in accordance with the policies and rules adopted by the Information Resources Management Commission.

"§ 143B-472.52. Information technology portfolio-based management.

(a) The purposes of information technology portfolio-based management are to:

- (1) Ensure agencies link agency information technology investments with business plans.
- (2) Facilitate risk assessment of information technology projects and investments.
- (3) Ensure agencies justify information technology investments on the basis of sound business cases.
- (4) Ensure agencies facilitate development and review of information technology performance related to business operations.
- (5) Identify projects that can cross agency and program lines in order to leverage resources.
- (6) Assist in State government-wide planning for common, shared information technology infrastructure.

(b) The Office shall coordinate with the Office of State Budget and Management and the Office of State Planning to integrate agency strategic and business planning, technology planning and budgeting, and project expenditure processes into the Office's information technology portfolio-based management. The Office shall provide recommendations for agency annual budget requests for information technology investments, projects, and initiatives to the Office of State Budget and Management.

(c) In cooperation with State agencies, the Office shall conduct and maintain a continuous inventory of each State agency's current and planned investments in information technology, a compilation of information about these assets, and the total life cycle cost of these assets. In implementing the provisions of this subsection, the Office shall submit State government-wide policies for review and approval to the Information Resources Management Commission. The Office shall consult with the Office of State Controller to establish and implement the State government-wide information technology inventory. The Office shall develop and implement State government-wide standards, processes, and procedures for the required inventory and for the management of the State government-wide information technology portfolio. State agencies shall participate in the information technology portfolio management and shall comply with the standards and processes established by the Office in accordance with this subsection. The provisions of this subsection shall not relieve any department, institution, or agency of the State government from accountability for equipment, materials, supplies, and tangible and intangible personal property under its control.

(d) No State agency information technology project shall proceed without the prior certification by the Information Resources Management Commission of the project. The Information Resources Management Commission may establish thresholds at an agency level based on project cost, potential project risk, or agency size and budget.

"§ 143B-472.53. Enterprise management of information technology assets.

(a) The purpose of enterprise management is to create a plan and implement a State government-wide approach for managing distributed information technology assets to minimize total life cycle costs of assets, defined as total ownership costs from acquisition through retirement, while realizing maximum benefits for transacting the State's business and delivering services to its citizens.

(b) With input and recommendations from State agencies, the Office shall develop a plan for the State government-wide management of distributed information technology assets. The plan shall prescribe the State government-wide infrastructure and services for managing these assets. The plan shall be submitted to the Information Resources Management Commission for approval.

(c) Upon receiving approval by the Information Resources Management Commission, the Office shall ensure agency implementation of the plan, including the development of appropriate standards, processes, and procedures. The implementation effort shall follow Information Resources Management Commission project reporting policies. State agencies must participate in the enterprise management of information technology assets and must comply with the standards and processes of the Office.

"§ 143B-472.54. Procurement of information technology.

Notwithstanding any other provision of law, the Office shall procure all information technology for State agencies except The University of North Carolina and its constituent institutions. The Office shall integrate technological review, cost analysis, and procurement for all information technology needs of those State agencies in order to make procurement and implementation of technology more responsive, efficient, and cost-effective.

"§ 143B-472.55. Powers and duties for procurement of information technology.

The Office shall have the authority and responsibility, subject to the provisions of this Part, to:

- (1) Purchase or to contract for, by suitable means in conformity with G.S. 143-135.9, all information technology in the State government, or any of its departments, institutions, or agencies covered by this Part, or to authorize any department, institution, or agency covered by this Part to purchase or contract for such information technology.
- (2) Establish processes, specifications, and standards which shall apply to all information technology to be purchased, licensed, or leased in the State government or any of its departments, institutions, or agencies covered by this Part.
- (3) Comply with the State government-wide technical architecture, as required by the Information Resources Management Commission.

"§ 143B-472.56. Restriction on contractual authority of State agencies for information technology.

All State agencies covered by this Part shall use contracts for information technology acquired by the Office for any information

technology required by the State agency that is provided by these contracts. Notwithstanding any other statute, the authority of State agencies to procure or obtain information technology shall be subject to compliance with the provisions of this Part. The Office shall have the authority to exercise the authority of State agencies to procure or obtain information technology as otherwise provided by statute.

"§ 143B-472.57. Attorney General contract assistance.

At the request of the State Chief Information Officer, the Attorney General shall provide legal advice and services necessary to implement this Part.

"§ 143B-472.58. Information technology procurement requirements.

(a) Policy. -- In order to further the policy of the State to encourage and promote the use of small, minority, physically handicapped, and women contractors in State purchasing of goods and services, all State agencies covered by this Part shall cooperate with the Office in efforts to encourage the use of small, minority, physically handicapped, and women contractors in achieving the purpose of this Part, which is to provide for the effective and economical acquisition, management, and disposition of information technology.

(b) Reporting. -- Every State agency required by this Part to use the services of the Office in the procurement of information technology which purchases information technology directly shall report to the Office the information required by G.S. 143-48(b) and the Office shall report to the Department of Administration in accordance with G.S. 143-48(b).

(c) The Department of Administration shall collect and compile the data described in this section and report it annually to the Office.

"§ 143B-472.59. Unauthorized use of public purchase or contract procedures for private benefit.

(a) It shall be unlawful for any person, by the use of the powers, policies, or procedures described in this Part or established hereunder, to purchase, attempt to purchase, procure, or attempt to procure any property or services for private use or benefit.

(b) This prohibition shall not apply if:

(1) The department, institution, or agency through which the property or services are procured had theretofore established policies and procedures permitting such purchases or procurement by a class or classes of persons in order to provide for the mutual benefit of such persons and the department, institution, or agency involved, or the public benefit or convenience; and

(2) Such policies and procedures, including any reimbursement policies, are complied with by the person permitted thereunder to use the purchasing or procurement procedures described in this Part or established thereunder.

(c) A violation of this section is a Class 1 misdemeanor.

"§ 143B-472.60. Financial interest of officers in sources of supply; acceptance of bribes.

The Secretary of Commerce, the assistants of the Secretary of Commerce, and the State Chief Information Officer shall not be financially interested, or have any personal beneficial interest, either directly or indirectly, in the purchase of, or contract for, any information technology, nor in any firm, corporation, partnership, or association furnishing any information technology to the State government, or any of its departments, institutions, or agencies, nor shall any of these persons or any other Office employee accept or receive, directly or indirectly, from any person, firm, or corporation to whom any contract may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation, or contract for future reward or compensation. Any violation of this section shall be deemed a Class F felony. Upon conviction of a violation of this section, any person shall be removed from office or State employment.

"§ 143B-472.61. Certification that information technology bids were submitted without collusion.

The Office shall require bidders to certify that each bid on information technology contracts overseen by the Office is submitted competitively and without collusion. False certification is a Class I felony.

"§ 143B-472.62. Penalties for violations.

Any employee or official of the State who violates this Part shall be liable to the State to repay any amount expended in violation of this Part, together with any court costs.

"§ 143B-472.63. Board of Award review.

(a) When the dollar value of a contract for the procurement of information technology exceeds the benchmark established by the Secretary of Commerce, the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded.

(b) Prior to submission of any contract for review by the Board of Awards pursuant to this section for any contract for information technology being acquired for the benefit of the Office and not on behalf of any other State agency, the Director of the Budget shall review and approve the procurement to insure compliance with the established processes, specifications, and standards applicable to all information technology purchased, licensed, or leased in State government, including established procurement processes, and compliance with the State government-wide technical architecture as established by the Information Resources Management Commission.

"§ 143B-472.64. Financial reporting and accountability for information technology investments and expenditures.

The Office, the Office of State Budget and Management, and the Office of State Controller shall jointly develop a system for budgeting and accounting of expenditures for information technology operations, services, projects, infrastructure, and assets. The system shall include hardware, software, personnel, training, contractual services, and other items relevant to information technology, and the sources of

funding for each. This system must integrate seamlessly with the enterprise portfolio management system. Annual reports regarding information technology shall be coordinated by the Office with the Office of State Budget and Management and the Office of State Controller, and submitted to the Governor, General Assembly, and the Information Resources Management Commission on or before October 1 of each year.

"§ 143B-472.65. Rule-making authority.

The Secretary of Commerce is authorized to adopt rules necessary to implement the provisions of this Part.

"§ 143B-472.66. Exempt agencies.

Nothing in this Part shall apply to the General Assembly or The University of North Carolina and its constituent institutions.

"§ 143B-472.67. Information technology reports.

(a) The Office shall develop an annual budget for review and approval by the Information Resources Management Commission prior to April 1 of each year. A copy of the approved budget shall be submitted to the Joint Select Committee on Information Technology and the Fiscal Research Division.

(b) The Office shall report to the Joint Select Committee on Information Technology and the Fiscal Research Division on the Office's Internal Service Fund on a quarterly basis, no later than the first day of the second month following the end of the quarter. The report shall include current cash balances, line item detail on expenditures from the previous quarter and anticipated expenditures for the upcoming quarter, projected year-end balance, and the status report on personnel position changes including new positions created and existing positions eliminated. The Office spending reports shall comply with the State Accounting System object codes."

Section 11. G.S. 143B-472.41(b)(8) reads as rewritten:

"(8) To develop and promote ~~a policy and procedures~~ technical requirements for the fair and competitive procurement of information technology consistent with the rules of the Department of Administration and consistent with published industry standards for open systems that provide agencies with a vendor-neutral operating environment in cooperation with the Office of Information Technology Services where different information technology hardware, software, and networks operate together easily and reliably. reliably, while considering the cost-effectiveness of managing these assets."

Section 12. G.S. 143-52 reads as rewritten:

"§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, printing, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements

will involve an expenditure in excess of the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper widely distributed in this State or through electronic means, or both, as determined by the Secretary to be most advantageous, at least once and at least 10 days prior to the date designated for opening. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated and that tabulation shall become public record in accordance with the rules adopted by the Secretary. All contract information shall be made a matter of public record after the award of contract. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. When the dollar value of a contract for the purchase, lease, or lease/purchase of equipment, materials, and supplies exceeds the benchmark established by G.S. 143-53.1, the contract shall be reviewed by the Board of Awards pursuant to G.S. 143-52.1 prior to the contract being awarded. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

Section 13. Article 3 of Chapter 143 is amended by adding the following new section to read:

"§ 143-52.1. Board of Awards.

(a) There is created the Board of Awards. The Board shall consist of three members at a time, appointed by the Chair of the Commission. Members of the Board shall be appointed on a rotating basis from the membership of the Commission and the Council of State. Two out of three members appointed for each meeting of the Board shall constitute a quorum of the Board.

(b) The Board shall meet weekly as called by the Chair of the Commission, except in weeks when no contracts have been submitted to the Board for review.

(c) When the dollar value of a contract exceeds the benchmark established either pursuant to G.S. 143-53.1 or G.S. 143B-472.63, the Board shall review and make a recommendation on action to be taken by the Secretary of Administration on contracts to be awarded under Article 3 of Chapter 143 of the General Statutes and on contracts to be awarded by the Secretary of Commerce under Part 16 of Article 10 of Chapter 143B of the General Statutes, prior to the awarding of the contract.

(d) The State Budget Officer shall designate a secretary for the Board. The Secretaries of Administration and Commerce shall each submit their matters for consideration to the secretary for inclusion on the Board's agenda. Records shall be kept of each meeting and made public by the applicable Secretary of Administration or Commerce unless the applicable Secretary determines a specific record of the meeting needs to be confidential due to the nature of the contract. The applicable Secretary may elect to proceed with the award of a contract without a recommendation of the Board in cases of emergencies or in the event that a Board is not available. In those cases, contracts awarded without Board review shall be reported to the next meeting of the Board as a matter of record.

(e) Reports on recommendations made by the Board on matters presented by the Secretary of Commerce to the Board shall be reported monthly by the Board to the chairs of the Joint Select Committee on Information Technology."

Section 14. G.S. 143-56 reads as rewritten:

"§ 143-56. Certain purchases excepted from provisions of Article.

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

- (1) Published books, manuscripts, maps, pamphlets and periodicals.
- (2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for information technology purchased in accordance with

Part 16 of Article 10 of Chapter 143B of the General Statutes, for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the expenditure benchmark established under the provisions of G.S. 143-53.1, for group purchases made by hospitals through a competitive bidding purchasing program, as defined in ~~G.S. 143-29~~ [G.S. 143-129], G.S. 143-129, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

Section 15. G.S. 143-135.9(c) reads as rewritten:

"(c) The acquisition of information technology by the State of North Carolina shall be conducted using the "Best Value" procurement method. For acquisitions which the procuring agency and the Division of Purchase and Contracts or the Office of Information Technology Services, as applicable, deem to be highly complex or determine that the optimal solution to the business problem at hand is not known, the use of Solution-Based Solicitation and Government-Vendor Partnership is authorized and encouraged."

Section 16. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a4) Notwithstanding the provisions of subsection (a) of this section, the Secretary of Commerce may adopt temporary rules to implement the information technology procurement provisions of Part 16 of Article 10 of Chapter 143B of the General Statutes. After having the proposed temporary rule published in the North Carolina Register and at least 30 days prior to adopting a temporary rule pursuant to this subsection, the Secretary shall:

- (1) Notify persons on its mailing list maintained pursuant to G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a temporary rule;
- (2) Accept oral and written comments on the proposed temporary rule; and
- (3) Hold at least one public hearing on the proposed temporary rule.

When the Secretary adopts a temporary rule pursuant to this subsection, the Secretary must submit a reference to this subsection as the Secretary's statement of need to the Codifier of Rules.

Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Secretary in accordance with this subsection."

Section 17. G.S. 150B-38(a) reads as rewritten:

"(a) The provisions of this Article shall apply to the following agencies:

- (1) Occupational licensing agencies;
- (2) The State Banking Commission, the Commissioner of Banks, the Savings Institutions Division of the Department of Commerce, and the Credit Union Division of the Department of Commerce; and
- (3) The Department of Insurance and the Commissioner of Insurance.
- (4) The Department of Commerce in the administration of the provisions of Part 16 of Article 10 of Chapter 143B of the General Statutes."

Section 18. G.S. 143B-472.41(a) reads as rewritten:

"(a) Creation; Membership. -- The Information Resource Management Commission is created in the Department of Commerce. The Commission consists of the following members:

- (1) Four members of the Council of State, appointed by the Governor.
- (1a) **(Expires June 30, 2001.)** The Secretary of State.
- (2) The Secretary of Administration.
- (3) The State Budget Officer.
- (4) Two members of the Governor's cabinet, appointed by the Governor.
- (5) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121.
- (6) One citizen of the State of North Carolina with a background in and familiarity with information systems or telecommunications, appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.
- (7) The Chair of the Governor's Committee on Data Processing and Information Systems.
- (8) The Chair of the ~~State Information Processing Services Advisory Board.~~ Information Technology Management Advisory Council.
- (9) The Chair of the Criminal Justice Information Network Governing Board.
- (10) **(Expires June 30, 2001.)** The State Controller.

- (11) The Director of the Administrative Office of the Courts or the Director's designee.
- (12) The President of The University of North Carolina or the President's designee.
- (13) The State Chief Information Officer, who shall be a non-voting member.

Members of the Commission shall not be employed by or serve on the board of directors or other corporate governing body of any information systems, computer hardware, computer software, or telecommunications vendor of goods and services to the State of North Carolina.

The two initial cabinet members appointed by the Governor and the two initial citizen members appointed by the General Assembly shall each serve a term beginning September 1, 1992, and expiring on June 30, 1995. Thereafter, their successors shall be appointed for four-year terms, commencing July 1. Members of the Governor's cabinet shall be disqualified from completing a term of service of the Commission if they are no longer cabinet members.

The appointees by the Governor from the Council of State shall each serve a term beginning on September 1, 1992, and expiring on June 30, 1993. Thereafter, their successors shall be appointed for four-year terms, commencing July 1. Members of the Council of State shall be disqualified from completing a term of service on the Commission if they are no longer members of the Council of State.

Vacancies in the two legislative appointments shall be filled as provided in G.S. 120-122.

The Commission chair shall be elected in the first meeting of each calendar year from among the appointees of the Governor from the Council of State and shall serve a term of one year. The Secretary of Commerce shall be secretary to the Commission.

No member of the Information Resource Management Commission shall vote on an action affecting solely his or her own State agency."

Section 19. The Secretary of Commerce shall develop and implement no later than December 31, 1999, policies and procedures to ensure the use of "Best Value" Procurement and, as applicable, Solution-Based Procurement and Government-Vendor Partnership, in the procurement of information technology by State agencies under the provisions of this act.

Section 20. The Secretary of Commerce shall develop and implement no later than December 31, 1999, policies, procedures, and/or programs to ensure that personnel of State agencies covered by this act and the Office of Information Technology Services involved in the development of solicitations, development of specifications, evaluation of proposals, selection of vendors, administration of contracts, and management of information technology projects receive high-quality training in the principles of "Best Value" Procurement, Solution-Based Procurement, Government-Vendor Partnership, contract administration, and project management.

Section 21. The Secretary of Commerce shall report to the Joint Select Committee on Information Technology on the results of the implementation of this act on or before April 1, 2000.

Section 22. The Joint Select Committee on Information Technology shall study the governance of State government-wide information technology management by the creation of a centralized agency that would be responsible for all information technology-related issues. Further, the Committee shall study the feasibility and advisability of alternative organizational structures, including a separate information technology office in the Office of the Governor, a separate cabinet department or a restructuring of the Department of Administration as the Department of Information Technology and Administration. The Committee may make an interim report to the 2000 Session of the 1999 General Assembly and shall make a final report to the General Assembly prior to the convening of the 2001 General Assembly on the plan of an organizational structure and funding requirements that are required to implement it.

Section 23. The Office of the State Auditor shall audit the Office of Information Technology Services, and in particular the additional powers conferred upon the Office of Information Technology Services by this act, as provided in this section. The issues to be addressed by the audits shall include:

- (1) A determination of whether the Office of Information Technology Services has established adequate rules and internal procedures to exercise the powers granted to it under Part 16 of Article 10 of Chapter 143B, and in particular the additional powers conferred upon the Office of Information Technology Services by this act;
- (2) A determination of whether the Office of Information Technology Services has complied with applicable statutes, rules, and regulations;
- (3) The efficiency and effectiveness of the procurement policies and operations of the Office of Information Technology Services; and
- (4) Such other issues as deemed necessary or desirable by the State Auditor.

The Office of the State Auditor shall issue an interim report on the Office of Information Technology Services operations from January 1, 2000, through June 30, 2000, and an interim report on operations from January 1, 2000, through December 31, 2000. The final report shall cover operations from January 1, 2000, through June 30, 2001. The State Auditor is hereby requested to include in the reports any suggestions or recommendations for improved operations as the State Auditor deems appropriate.

The Office of Information Technology Services shall reimburse the Office of the State Auditor for the costs of performing the audits required by this section.

Section 24. Part 16 of Article 10 of Chapter 143B of the General Statutes is amended by adding the following sections to read:

"§ 143B-472.41A. Information Resources Management Commission staff.

(a) There is established in the Department of Commerce an independent staff for the Information Resources Management Commission. The staff shall consist of an executive director and such other professional, administrative, technical, and clerical personnel as authorized by the General Assembly as may be necessary to assist the Commission in carrying out its powers and duties.

(b) All independent staff shall be appointed, supervised, and directed by the Commission. The executive director shall be exempt from the provisions of Chapter 126 of the General Statutes, except for Articles 6 and 7 of Chapter 126 of the General Statutes. All other staff personnel shall be subject to the provisions of Chapter 126 of the General Statutes. The independent staff shall not be subject to the supervision, direction, or control of the Secretary of Commerce.

(c) Except for the executive director, salaries and compensation of all staff personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies.

(d) Expenses of the Commission and the salaries of the independent staff shall be paid from funds from receipts available to the Office as requested by the Commission."

Section 25. G.S. 126-5(c1) reads as rewritten:

"(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

- (1) Constitutional officers of the State.
- (2) Officers and employees of the Judicial Department.
- (3) Officers and employees of the General Assembly.
- (4) Members of boards, committees, commissions, councils, and advisory councils compensated on a per diem basis.
- (5) Officials or employees whose salaries are fixed by the General Assembly, or by the Governor, or by the Governor and Council of State, or by the Governor subject to the approval of the Council of State.
- (6) Employees of the Office of the Governor that the Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
- (7) Employees of the Office of the Lieutenant Governor, that the Lieutenant Governor, at any time, in his discretion, exempts from the application of the provisions of this Chapter by means of a letter to the State Personnel Director designating these employees.
- (8) Instructional and research staff, physicians, and dentists of The University of North Carolina.
- (9) Employees whose salaries are fixed under the authority vested in the Board of Governors of The University of North Carolina by the provisions of G.S. 116-11(4), 116-11(5), and 116-14.

- (10) Repealed by Session Laws 1991, c. 84, s. 1.
- (11) North Carolina School of Science and Mathematics' employees whose salaries are fixed in accordance with the provisions of G.S. 116-235(c)(1) and G.S. 116-235(c)(2).
- (12) Employees of the North Carolina Low-Level Radioactive Waste Management Authority whose salaries are fixed pursuant to G.S. 104G-5(g)(1) and G.S. 104G-5(g)(2).
- (13) Employees of the North Carolina Hazardous Waste Management Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1) and G.S. 130B-6(g)(2).
- (14) Employees of the North Carolina State Ports Authority.
- (15) Employees of the North Carolina Global TransPark Authority.
- (16) The executive director and one associate director of the North Carolina Center for Nursing established under Article 9F of Chapter 90 of the General Statutes.
- (17) The executive director of the independent staff of the Information Resources Management Commission established under G.S. 143B-472.41A."

Section 26. If House Bill 253 of the 1999 General Assembly becomes law, Section 1 of House Bill 253 reads as rewritten:

"Section 1. The name of the State Information Processing Services of the Department of Commerce is changed to the Division Office of Information Technology Services."

Section 27. If House Bill 253 of the 1999 General Assembly becomes law, G.S. 143B-472.44, as enacted by Section 2 of House Bill 253, reads as rewritten:

"§ 143B-472.44. Division Office of Information Technology Services.

With respect to all executive departments and agencies of State government, except the Department of Justice and The University of North Carolina, the Department of Commerce shall have the following powers and duties:

- (1) To establish and operate information resource centers and services to serve two or more departments on a cost-sharing basis, if the Information Resources Management Commission decides it is advisable from the standpoint of efficiency and economy to establish these centers and services;
- (2) With the approval of the Information Resources Management Commission, to charge each department for which services are performed its proportionate part of the cost of maintaining and operating the shared centers and services;
- (3) With the approval of the Information Resources Management Commission, to require any department served to transfer to the Department of Commerce ownership, custody, or control of information processing equipment, supplies, and positions required by the shared centers and services;
- (4) With the approval of the Information Resources Management Commission, to adopt reasonable rules for the efficient and

economical management and operation of the shared centers, services, and the integrated State telecommunications network;

- (5) With the approval of the Information Resources Management Commission, to adopt plans, policies, procedures, and rules for the acquisition, management, and use of information technology resources in the departments affected by this subdivision to facilitate more efficient and economic use of information technology in these departments;
- (6) To develop and promote training programs to efficiently implement, use, and manage information technology resources; and
- (7) To provide cities, counties, and other local governmental units with access to ~~Division~~ Office of Information Technology Services information resource centers and services as authorized in this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies.

The Department of Revenue is authorized to deviate from this subsection's requirements that departments or agencies consolidate information processing functions on equipment owned, controlled or under custody of the ~~Division~~ Office of Information Technology Services. All deviations from this subsection's requirements shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission and shall be consistent with available funding. The Department of Revenue is authorized to adopt and shall adopt plans, policies, procedures, requirements and rules for the acquisition, management, and use of information processing equipment, information processing programs, data communications capabilities, and information systems personnel in the Department of Revenue. If the plans, policies, procedures, requirements, rules, or standards adopted by the Department of Revenue deviate from the policies, procedures, or guidelines adopted by the ~~Division~~ Office of Information Technology Services or the Information Resources Management Commission, those deviations shall be allowed and shall be reported in writing within 15 days by the Department of Revenue to the Information Resources Management Commission. The Department of Revenue and the ~~Division~~ Office of Information Technology Services shall develop data communications capabilities between the two computer centers utilizing the North Carolina Integrated Network, subject to a security review by the Secretary of Revenue.

The Department of Revenue shall prepare a plan to allow for substantial recovery and operation of major, critical computer applications. The plan shall include the names of the computer programs, databases, and data communications capabilities, identify the maximum amount of outage that can occur prior to the initiation of the plan and resumption of operation. The plan shall be consistent with commonly accepted practices for disaster recovery in the

information processing industry. The plan shall be tested as soon as practical, but not later than six months, after the establishment of the Department of Revenue information processing capability.

No data of a confidential nature, as defined in the General Statutes or federal law, may be entered into or processed through any cost-sharing information resource center or network established under this subdivision until safeguards for the data's security satisfactory to the department head and the Secretary of Commerce have been designed and installed and are fully operational. Nothing in this subsection may be construed to prescribe what programs to satisfy a department's objectives are to be undertaken, nor to remove from the control and administration of the departments the responsibility for program efforts, regardless whether these efforts are specifically required by statute or are administered under the general program authority and responsibility of the department. This subdivision does not affect the provisions of G.S. 147-64.6, 147-64.7, or 143B-472.42(1). Notwithstanding any other provision of law, the Department of Commerce shall provide information technology services on a cost-sharing basis to the General Assembly and its agencies as requested by the Legislative Services Commission."

Section 28. If House Bill 253 of the 1999 General Assembly becomes law, Section 3 of House Bill 253 is repealed.

Section 29. If House Bill 253 of the 1999 General Assembly becomes law, G.S. 143B-472.42(1), as enacted by Section 4 of House Bill 253, reads as rewritten:

"(1) With respect to State agencies, exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of these agencies. In discharging that responsibility the Secretary of Commerce may in cooperation with affected State agency heads, do such of the following things as the Secretary of Commerce deems necessary and advisable:

a. Provide for the establishment, management, and operation, through either State ownership or commercial leasing, of the following systems and services as they affect the internal management and operation of State agencies:

1. Central telephone systems and telephone networks;
2. Teleprocessing systems;
3. Teletype and facsimile services;
4. Satellite services;
5. Closed-circuit TV systems;
6. Two-way radio systems;
7. Microwave systems;
8. Related systems based on telecommunication technologies.

b. With the approval of the Information Technology Council, Information Resources Management Commission, coordinate the development of cost-

sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item "a." of this subdivision.

- c. Assist in the development of coordinated telecommunications services or systems within and among all State agencies and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.
- d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item "a." of this subdivision.
- e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support compatibility of the systems within State agencies.
- f. Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.
- g. Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.
- h. Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State agencies.
- i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.
- j. Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.
- k. Advise all State agencies on telecommunications management planning and related matters and provide through the State Personnel Training Center or the Division Office of Information Technology Services training to users within State agencies in telecommunications technology and systems.
- l. Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information

about State telecommunications activities in relation to the full range of emerging technologies.

- m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision.

The provisions of this subdivision shall not apply to the Criminal Information Division of the Department of Justice or to the Judicial Information System in the Judicial Department."

Section 30. The provisions of G.S. 143B-472.52(d), as enacted in Section 10 of this act, shall not apply to any projects certified prior to the effective date of that subsection.

Section 31. The Information Resources Management Commission is authorized to establish and fill up to five staff positions in accordance with the provisions of G.S. 143B-472.41A. These positions shall be transferred from existing positions currently authorized for the Office of Information Technology Services.

Section 32. Sections 1 through 7 and Sections 18 through 32 of this act are effective when this act becomes law. The remaining sections of this act become effective January 1, 2000.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

Became law upon approval of the Governor at 9:07 p.m. on the 10th day of August, 1999.

S.B. 562

SESSION LAW 1999-435

AN ACT TO REPEAL FORM AND RATE FILING FEES AND HMO ANNUAL REPORT FEES COLLECTED BY THE DEPARTMENT OF INSURANCE; TO INCREASE CERTAIN INSURANCE COMPANY LICENSE RENEWAL FEES COLLECTED BY THE DEPARTMENT OF INSURANCE; AND TO CLARIFY AN EXAMINATION LAW PROVIDING FOR REIMBURSEMENT FOR DEPARTMENTAL EXPENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-6-5(5) is repealed.

Section 2. G.S. 58-6-7 reads as rewritten:

"§ 58-6-7. *Annual license fees for insurance companies.*

(a) ~~As a condition precedent to doing~~ In order to do business in this State, an insurance company ~~must~~ shall apply for and obtain a license from the Commissioner of Insurance by March 1 of each year. The license shall become effective the following July 1 and shall remain in effect for one year. Except as provided in ~~subsections (b) and (c)~~ subsection (b) of this section, the insurance company shall pay an annual fee for the license as follows:

For each domestic farmer's mutual assessment fire insurance company	\$ 25.00
For each fraternal order	100.00

For each of all other insurance companies, except mutual burial associations taxed under G.S.

105-121.1

~~500.00~~ 1,000.00

The fees levied in this subsection ~~shall be~~ are in addition to those specified in G.S. 58-6-5.

(b) When the paid-in capital stock ~~and/or surplus~~ or surplus, or both, of an insurance ~~company~~ company, other than a farmer's mutual assessment company or a fraternal ~~order~~ order, does not exceed one hundred thousand dollars (\$100,000), the fee levied in this section shall be ~~one-half~~ one-half the amount ~~above~~ specified.

(c) Upon payment of the fee specified above and the fees and taxes elsewhere specified each insurance company, exchange, bureau, or agency, shall be entitled to do the types of business specified in Chapter 58, of the General Statutes of North Carolina as amended, to the extent authorized therein, except that: Insurance companies authorized to do either the types of business specified for (i) life insurance companies, or (ii) for fire and marine companies, or (iii) for casualty and fidelity and surety companies, in G.S. 58-7-75, which shall also do the types of business authorized in one or both of the other of the above classifications shall in addition to the fees above specified pay one hundred dollars (\$100.00) for each such additional classification of business done. All fees and charges collected by the Commissioner under this Chapter are nonrefundable.

(d) Any rating bureau established by action of the General Assembly of North Carolina shall be exempt from the fees ~~above levied~~ in this section."

Section 3. G.S. 58-22-70 reads as rewritten:

"§ 58-22-70. *Registration and renewal fees.*

Every risk retention group and purchasing group that registers with the Commissioner under this Article shall pay the following fees:

Risk retention group registration	\$250.00
Purchasing group registration	50.00
Risk retention group renewal	500.00

1,000.00

Purchasing group renewal	50.00
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Registration fees ~~are nonrefundable~~, shall not be ~~prorated~~, prorated and must be submitted with the application for registration. Renewal fees ~~are nonrefundable~~, shall not be ~~prorated~~, prorated and shall be paid on or before January 1 of each year."

Section 4. G.S. 58-27-10 reads as rewritten:

"§ 58-27-10. *Licenses.*

Any domestic land mortgage company, or title insurance company, wishing to do business under the provisions of this Article upon making written application and submitting proof satisfactory to the Commissioner that its business, capital and other qualifications comply with the provisions of this Article, upon paying to the Commissioner, the sum of five hundred dollars (\$500.00) as a license fee and all other fees assessed against such company may be licensed to do business in this State under the provisions of this Article until the first

day of the following July, and may have its license renewed for each year thereafter so long as it complies with the provisions of this Article and such rules adopted by the Commissioner. For each such renewal such company shall pay to the Commissioner the sum of ~~five hundred dollars (\$500.00)~~, one thousand dollars (\$1,000), and all other fees assessed against such company and such renewal shall continue in force and effect until a new license be issued or specifically refused, unless revoked for good cause. The Commissioner, or any person appointed by him, shall have the power and authority to make such rules and regulations and examinations not inconsistent with the provisions of this Article, as may be in his discretion necessary or proper to enforce the provisions hereof and secure compliance with the terms of this Article. For any examination made hereunder the Commissioner shall charge the land mortgage companies or title insurance companies examined with the actual expense of such examination."

Section 5. G.S. 58-65-55 reads as rewritten:

"§ 58-65-55. *Issuance of certificate.*

Before issuing any such license or certificate the Commissioner may make such an examination or investigation as ~~he~~ the Commissioner deems expedient. The Commissioner shall issue a certificate of authority or license upon the payment of an annual fee of ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) and upon being satisfied on the following points:

- (1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.
- (2) The rates charged and benefits to be provided are fair and reasonable.
- (3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department deems adequate, as provided hereinafter.
- (4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate."

Section 6. G.S. 58-67-160 reads as rewritten:

"§ 58-67-160. *Fees.*

Every health maintenance organization subject to this Article shall pay to the Commissioner ~~the following fees:~~ a fee of two hundred fifty dollars (\$250.00) for filing an application for a license and a fee of one thousand dollars (\$1,000) for each license renewal.

- (1) ~~For filing an application for a certificate of authority, two hundred fifty dollars (\$250.00); for each renewal thereof, five hundred dollars (\$500.00);~~

~~(2) For filing each annual report, one hundred dollars (\$100.00)."~~

Section 7. G.S. 58-2-134 reads as rewritten:

"§ 58-2-134. *Cost of certain examinations.*

(a) An insurer shall reimburse the State Treasurer for the actual expenses incurred by the Department in any examination of those records or assets conducted ~~pursuant to~~ under G.S. 58-2-131, 58-2-132, or 58-2-133 when:

- (1) The insurer maintains part of its records or assets outside this State under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets outside this State.
- (2) The insurer requests an examination of its records or assets.
- (3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business.

(b) The amount paid by an insurer for an examination of records or assets under this section shall not exceed one hundred thousand dollars (\$100,000), unless the insurer and the Commissioner agree on a higher amount. The State Treasurer shall deposit all funds received ~~pursuant to~~ under this section in the Insurance Regulatory Fund established ~~pursuant to~~ under G.S. 58-6-25. Funds received under this section shall be used by the Department for offsetting the actual expenses incurred by the Department for examinations under this section."

Section 8. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:11 p.m. on the 10th day of August, 1999.

S.B. 829

SESSION LAW 1999-436

AN ACT TO DIRECT THE JOINT LEGISLATIVE TRANSPORTATION OVERSIGHT COMMITTEE TO STUDY ISSUES RELATED TO PROHIBITING THE ERECTION OF OUTDOOR ADVERTISING ON A PORTION OF INTERSTATE HIGHWAY 40 AND TO IMPOSE A MORATORIUM PENDING THE COMMITTEE'S REPORT TO THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. The Joint Legislative Transportation Oversight Committee shall study whether the additional erection of outdoor advertising along the portion of Interstate Highway 40 from the Orange-Alamance county line to the municipal limits of the City of Wilmington should be prohibited. The Committee shall examine the issue with regard to outdoor advertising as defined in G.S. 136-128(3), that is visible and intended to be read from the highway right-

of-way. The Committee shall also study the advisability of the Department of Transportation allowing owners of billboards to enter upon the right-of-way and destroy vegetation which might obscure their advertising. The Committee shall report its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly. Pending the report of the Committee, a moratorium is imposed on the erection of new outdoor advertising along the portion of Interstate Highway 40 from the Orange-Alamance county line to the municipal limits of the City of Wilmington. The moratorium imposed by this section shall not apply to outdoor advertising described in G.S. 136-129 (1), (2), or (3). The moratorium shall expire July 1, 2000.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:15 p.m. on the 10th day of August, 1999.

S.B. 830

SESSION LAW 1999-437

AN ACT TO REGULATE AUTO REPAIRS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15B.

"North Carolina Motor Vehicle Repair Act.

"§ 20-354. Short title.

This act shall be known and may be cited as the 'North Carolina Motor Vehicle Repair Act.'

"§ 20-354A. Scope and application.

This act shall apply to all motor vehicle repair shops in North Carolina, except:

- (1) Any motor vehicle repair shop of a municipal, county, State, or federal government when carrying out the functions of the government.
- (2) Any person who engages solely in the repair of any of the following:
 - a. Motor vehicles that are owned, maintained, and operated exclusively by that person for that person's own use.
 - b. For-hire vehicles which are rented for periods of 30 days or less.
- (3) Any person who repairs only motor vehicles which are operated principally for agricultural or horticultural pursuits on farms, groves, or orchards and which are operated on the highways of this State only incidentally en route to or from the farms, groves, or orchards.
- (4) Motor vehicle auctions or persons in the performance of motor vehicle repairs solely for motor vehicle auctions.

- (5) Any motor vehicle repair shop in the performance of a motor vehicle repair if the cost of the repair does not exceed three hundred fifty dollars (\$350.00).
- (6) Any person or motor vehicle repair shop in the performance of repairs on commercial construction equipment or motor vehicles that have a GVWR of at least 26,001 pounds.
- (7) When an insurer has authorized a motor vehicle repair shop to perform the repair and had agreed to pay the cost of the repair.

"§ 20-354B. Definitions.

As used in this act:

- (1) 'Customer' means the person who signs the written repair estimate or any other person whom that person designates as a person who may authorize repair work.
- (2) 'Employee' means an individual who is employed full time or part time by a motor vehicle repair shop and performs motor vehicle repairs.
- (3) 'Motor vehicle' means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor-powered vehicle, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power, or watercraft or aircraft.
- (4) 'Motor vehicle repair' means all maintenance of and modification and repairs to motor vehicles and the diagnostic work incident to those repairs, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, and other work customarily undertaken by motor vehicle repair shops. Motor vehicle repair does not include the sale or installation of tires when authorized by the customer.
- (5) 'Motor vehicle repair shop' means any person who, for compensation, engages or attempts to engage in the repair of motor vehicles owned by other persons and includes, but is not limited to:
 - a. Mobile motor vehicle repair shops.
 - b. Motor vehicle and recreational vehicle dealers.
 - c. Garages.
 - d. Service stations.
 - e. Self-employed individuals.
 - f. Truck stops.
 - g. Paint and body shops.
 - h. Brake, muffler, or transmission shops.
 - i. Shops doing glasswork.

Any person who engages solely in the maintenance or repair of the coach portion of a recreational vehicle is not a motor vehicle repair shop.

"§ 20-354C. Written motor vehicle repair estimate and disclosure statement required.

(a) When any customer requests a motor vehicle repair shop to perform repair work on a motor vehicle, the cost of which repair work will exceed three hundred fifty dollars (\$350.00) to the customer, the shop shall prepare a written repair estimate, which is a form setting forth the estimated cost of repair work, including diagnostic work, before effecting any diagnostic work or repair. The written repair estimate shall also include a statement allowing the customer to indicate whether replaced parts should be saved for inspection or return and a statement indicating the daily charge for storing the customer's motor vehicle after the customer has been notified that the repair work has been completed.

(b) The information required by subsection (a) of this section need not be provided if the customer waives in writing his or her right to receive a written estimate. A customer may waive his or her right to receive any written estimates from a motor vehicle repair shop for a period of time specified by the customer in the waiver.

(c) Except as provided in subsection (e) of this section, a copy of the written repair estimate required by subsection (a) of this section shall be given to the customer before repair work is begun.

(d) If the customer leaves his or her motor vehicle at a motor vehicle repair shop during hours when the shop is not open or if the customer permits the shop or another person to deliver the motor vehicle to the shop, there shall be an implied partial waiver of the written estimate; however, upon completion of the diagnostic work necessary to estimate the cost of repair, the shop shall notify the customer as required by G.S. 20-354E(a).

(e) Nothing in this section shall be construed to require a motor vehicle repair shop to give a written estimate price if the motor vehicle repair shop does not agree to perform the requested repair.

"§ 20-354D. Charges for motor vehicle repair estimate; requirement of waiver of rights prohibited.

(a) Before proceeding with preparing an estimate, the shop shall do both of the following:

- (1) Disclose to the customer the amount, if any, of the charge for preparing the estimate.
- (2) Obtain a written authorization to prepare an estimate if there is a charge for that estimate.

(b) It is a violation of this Article for any motor vehicle repair shop to require that any person waive his or her rights provided in this Article as a precondition to the repair of his or her vehicle by the shop or to impose or threaten to impose any charge which is clearly excessive in relation to the work involved in making the price estimate for the purpose of inducing the customer to waive his or her rights provided in this Article.

"§ 20-354E. Notification of charges in excess of repair estimate; prohibited charges; refusal to return vehicle prohibited; inspection of parts.

(a) In the event that any of the following applies, the customer shall be promptly notified by telephone, telegraph, mail, or other

means of the additional repair work and estimated cost of the additional repair work:

- (1) The written repair estimate contains only an estimate for diagnostic work necessary to estimate the cost of repair and such diagnostic work has been completed.
- (2) A determination is made by a motor vehicle repair shop that the actual charges for the repair work will exceed the written estimate by more than ten percent (10%).
- (3) An implied partial waiver exists for diagnostic work, and the diagnostic work has been completed.

When a customer is notified, he or she shall, orally or in writing, authorize, modify, or cancel the order for repair.

(b) If a customer cancels the order for repair or, after diagnostic work is performed, decides not to have the repairs performed, and if the customer authorizes the motor vehicle repair shop to reassemble the motor vehicle, the shop shall expeditiously reassemble the motor vehicle in a condition reasonably similar to the condition in which it was received unless the reassembled vehicle would be unsafe.

After cancellation of the repair order or a decision by the customer not to have repairs made after diagnostic work has been performed, the shop may charge for and the customer is obligated to pay the cost of repairs actually completed that were authorized by the written repair estimate as well as the cost of diagnostic work and teardown, the cost of parts and labor to replace items that were destroyed by teardown, and the cost to reassemble the component or the vehicle, provided the customer was notified of these possible costs in the written repair estimate or at the time the customer authorized the motor vehicle repair shop to reassemble the motor vehicle.

(c) It is a violation of this Article for a motor vehicle repair shop to charge more than the written estimate and the amount by which the motor vehicle repair shop has obtained authorization to exceed the written estimate in accordance with subsections (a) or (b) of this section, plus ten percent (10%).

(d) It is a violation of this Article for any motor vehicle repair shop to refuse to return any customer's motor vehicle because the customer refused to pay for repair charges that exceed a written estimate and any amounts authorized by the customer in accordance with subsection (a) or (b) of this section by more than ten percent (10%), provided that the customer has paid the motor vehicle repair shop the amount of the estimate and the amounts authorized by the customer in accordance with subsections (a) and (b) of this section, plus ten percent (10%).

(e) Upon request made at the time the repair work is authorized by the customer, the customer is entitled to inspect parts removed from his or her vehicle or, if the shop has no warranty arrangement or exchange parts program with a manufacturer, supplier, or distributor, have them returned to him or her.

"§ 20-354F. Invoice required of motor vehicle repair shop.

The motor vehicle repair shop shall provide each customer, upon completion of any repair, with a legible copy of an invoice for such repair. The invoice shall include the following information:

- (1) A statement indicating what was done to correct the problem or a description of the service provided.
- (2) An itemized description of all labor, parts, and merchandise supplied and the costs thereof, indicating what is supplied to the customer without cost or at a reduced cost because of a shop or manufacturer's warranty.
- (3) A statement identifying any replacement part as being used, rebuilt, or reconditioned, as the case may be.

"§ 20-354G. Required disclosure; signs; notice to customers.

A sign, at least 24 inches on each side, shall be posted in a manner conspicuous to the public. The sign shall contain:

- (1) That the consumer has a right to receive a written estimate or to waive receipt of that estimate if the cost of repairs will exceed three hundred fifty dollars (\$350.00).
- (2) That the consumer may request, at the time the work order is taken, the return or inspection of all parts that have been replaced during the motor vehicle repair.

"§ 20-354H. Prohibited acts and practices.

It shall be a violation of this Article for any motor vehicle repair shop or employee of a motor vehicle repair shop to do any of the following:

- (1) Charge for repairs which have not been expressly or impliedly authorized by the customer.
- (2) Misrepresent that repairs have been made to a motor vehicle.
- (3) Misrepresent that certain parts and repairs are necessary to repair a vehicle.
- (4) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.
- (5) Fraudulently alter any customer contract, estimate, invoice, or other document.
- (6) Fraudulently misuse any customer's credit card.
- (7) Make or authorize in any manner or by any means whatever any written or oral statement which is untrue, deceptive, or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading, related to this Article.
- (8) Make fraudulent promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.
- (9) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to his or her insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of the

- insurer or its claims adjuster is disclosed to the motor vehicle repair shop.
- (10) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer.
 - (11) Refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.
 - (12) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in a manner that does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.
 - (13) Perform any other act that is a violation of this Article or that constitutes fraud or misrepresentation under this Article.

"§ 20-354I. Remedies.

Any customer injured by a violation of this Article may bring an action in the appropriate court for relief. The prevailing party in that action may be entitled to damages plus court costs and reasonable attorneys' fees. The customer may also bring an action for injunctive relief in the appropriate court. A violation of this Article is not punishable as a crime; however, this Article does not limit the rights or remedies which are otherwise available to a consumer under any other law."

Section 2. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 35.

"Truthful Advertisements of Costs of Servicing or Repairing Private Passenger Vehicles.

"§ 66-280. Advertisements of servicing or repairing private passenger vehicles.

(a) Any business that services or repairs private passenger vehicles and advertises the cost of a specified service or repair of private passenger vehicles shall disclose in the advertisement all additional charges routinely charged for that service or repair, including shop supplies or charges, except any fees and taxes that are required by law, that a consumer will be charged.

(b) If a business that services or repairs private passenger vehicles fails to comply with the requirements of this section, then, upon written notice to that business, the consumer is required to pay only those charges disclosed in the advertisement, plus any fees and taxes that are required by law.

(c) A violation of this section shall constitute an unfair trade practice under G.S. 75-1.1.

(d) For purposes of this section, 'private passenger vehicle' has the same meaning as in G.S. 20-4.01."

Section 3. This act becomes effective January 1, 2000.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:17 p.m. on the 10th day of August, 1999.

S.B. 1112

SESSION LAW 1999-438

AN ACT TO PROMOTE ELECTRONIC COMMERCE BY REPEALING THE SALES TAX REGISTRATION FEE AND TO MAKE OTHER CHANGES TO THE TAX LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the ~~Department and pay fifteen dollars (\$15.00).~~ Department.

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 1.1. G.S. 105-164.6(f) reads as rewritten:

"(f) Before a person may engage in business in this State selling or delivering tangible personal property for storage, use, or consumption in this State, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the ~~Department and pay fifteen dollars (\$15.00).~~ Department.

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 2. G.S. 105-88 reads as rewritten:

"§ 105-88. ~~Loan agencies or brokers.~~ agencies.

(a) Every person, firm, or corporation engaged in any of the following businesses must pay for the privilege of engaging in that business an annual tax of two hundred fifty dollars (\$250.00) for each location at which the business is conducted:

- (1) ~~The the regular business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or otherwise, and maintaining in connection with same any office or other located or established place for the conduct, negotiation, or transaction of such business and/or advertising or soliciting such business in any manner whatsoever, shall be deemed a loan agency, and shall apply~~

~~for and procure from the Secretary of Revenue a State license for the privilege of transacting or negotiating such business at each office or place so maintained, and shall pay for such license a tax of seven hundred fifty dollars (\$750.00), otherwise.~~

- (2) The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.
- (3) The business of pawnbroker regulated under Chapter 91A of the General Statutes.

(b) This section does not apply to banks, industrial banks, trust companies, savings and loan associations, cooperative credit unions, the business of negotiating loans on real estate as described in G.S. 105-41, ~~pawnbrokers lending or advancing money on specific articles of personal property,~~ or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker is required to obtain a privilege license under this section merely because the broker advances the broker's own funds and takes a security interest in real estate to secure the advances and when, at the time of the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount the obligation within the period specified in the arrangement or extensions thereof; or when, at the time of the advance the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of the obligation and does sell the obligation within the period specified in the arrangement or extensions thereof; or because the broker advances the broker's own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above is required to obtain a privilege license under this section.

(c) At the time of making any such loan, the person, or officer of the firm or corporation making the ~~same,~~ loan, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, ~~and~~ the time in which ~~said~~ the amount is to be paid, and the rate of interest and discount agreed upon.

(d) ~~Any such person, firm, or corporation failing, refusing, or neglecting to pay the tax herein levied shall be guilty of a Class 1 misdemeanor in addition to double the tax due. No such loan shall be~~
A loan is not collectible at law in the courts of this State in any case

where the person making ~~such the~~ loan has failed to pay the tax levied ~~herein, and/or otherwise complied~~ in this section or otherwise failed to comply with the provisions of this section.

(e) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one hundred dollars (\$100.00)."

Section 3. G.S. 105-159.1(d) reads as rewritten:

"(d) Return. -- ~~The Secretary shall amend the first page of the income tax return in order that all taxpayers desiring must give an individual the opportunity to make the political contributions~~ contribution authorized in this section may do so by designating on the front face of the tax return. The line of authorization for the designation shall be color contrasted with the color scheme of the remainder of the income tax return. section. The return or its accompanying explanatory instruction shall instructions must readily indicate that any designations neither increase nor decrease a contribution neither increases nor decreases an individual's tax liability."

Section 4. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means ~~an electric power company or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a~~ either of the following:

- a. A business entity that provides local, toll, or private telecommunications service as defined by G.S. 105-120(e), or a 105-120(e).
- b. A business entity or a municipality that sells electric power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes. power."

Section 5. G.S. 105-164.13(12) reads as rewritten:

"(12) Sales of any of the following items:

- a. Therapeutic, prosthetic, or artificial devices, such as pulmonary respirators or medical beds, that are designed for individual personal use to correct or alleviate physical illness, disease, or incapacity and that are sold on the written prescription of a physician, dentist, or other professional person licensed to prescribe, and crutches, prescribe.
- b. Crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of a physician or an optometrist, and orthopedic optometrist.
- c. Orthopedic appliances designed to be worn by the purchaser or user.
- d. Durable medical equipment and related medical supplies that are covered under the Medicare or

Medicaid program and are sold on either a certificate of medical necessity or a written prescription of a physician, dentist, or other professional person licensed to prescribe. This exemption applies whether or not the item is purchased by a Medicare or Medicaid beneficiary."

Section 6. G.S. 105-164.13(13) reads as rewritten:

"(13) All of the following drugs, including the constituent elements and ingredients used to produce the drugs, the packaging materials, and any instructions or information about the product included in the package with the drugs:

a. Prescription drugs.

b. ~~Medicines~~ Nonprescription drugs sold on prescription of physicians, dentists, or veterinarians; insulin whether or not sold on prescription, veterinarians.

c. Insulin."

Section 7. G.S. 105-164.13(13b) is repealed.

Section 8. G.S. 105-164.13(16) reads as rewritten:

"(16) Sales of any of the following articles:

a. ~~A used article taken in trade, or a series of trades, as a credit or part payment on the sale of a new article if tax is paid on the sales price of the new article. "New article" means the original stock in trade of the merchant and is not limited to a newly manufactured article.~~

b. ~~An~~ an article repossessed by the vendor if tax was paid on the sales price of the article."

Section 9. G.S. 105-164.13(35) reads as rewritten:

"(35) Sales by a nonprofit civic, charitable, educational, scientific, ~~literary~~ literary, or fraternal organization continuously chartered or incorporated within North Carolina for at least two years when such all of the following conditions are met:

a. The sales are conducted only upon an annual basis for the purpose of raising funds for its activities, and ~~when the organization's activities.~~

b. ~~the~~ The proceeds thereof of the sale are actually used for such purposes; provided, however, that no such sale shall be exempt if not actually consummated the organization's activities.

c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during ~~said~~ the organization's annual sales period."

Section 10. G.S. 105-164.13(39) is repealed.

Section 11. G.S. 105-164.13(42) reads as rewritten:

"(42) Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale

merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a governmental entity or a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes."

Section 12. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(46) Sales of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 13. G.S. 105-164.13A reads as rewritten:

"§ 105-164.13A. *Service charges on food, beverages, or meals.*

When a service charge is imposed on food, beverages, or meals, so much of ~~said the~~ service charge ~~as that~~ does not exceed ~~fifteen percent (15%)~~ twenty percent (20%) of the sales price is considered a tip and is specifically exempted from the tax imposed by this Article when the service charge; if it meets both of the following conditions:

- (1) Is separately stated in the price list, menu, or written proposal and also in the invoice or ~~bill; and bill.~~
- (2) Is turned over to the personnel directly involved in the service of the food, beverages, or meals, in accordance with G.S. 95-25.6.

~~Such service charge shall be considered to be a tip."~~

Section 14. G.S. 105-164.14(c)(16) reads as rewritten:

- "(16) A local airport authority that was created pursuant to a local act of the General Assembly ~~and has at least one of the following characteristics:~~
- ~~a. It has all of the rights of a municipality.~~
 - ~~b. A local act of the General Assembly declares it to be a municipality.~~
 - ~~c. A local act of the General Assembly specifically authorizes it to receive a refund under this section.~~
- Assembly."

Section 15. G.S. 105-236(1) reads as rewritten:

- "(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar (\$1.00) and a maximum of one thousand dollars (\$1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds.

~~The penalty imposed may not be waived or diminished by the Secretary."~~

Section 16. G.S. 105-236(5) reads as rewritten:

"(5) Negligence. --

- a. Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.
- b. Large individual income tax deficiency. -- In the case of individual income tax, if a taxpayer understates taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code.
- c. Other large tax deficiency. -- In the case of a tax other than individual income tax, if a taxpayer understates tax liability by twenty-five percent (25%) or more, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency.
- d. No double penalty. -- If a penalty is assessed under subdivision (6) of this section, no additional penalty for negligence shall be assessed with respect to the same deficiency.
- e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance, estate, and gift tax deficiencies that are the result of valuation understatements."

Section 17. G.S. 105-237(a) reads as rewritten:

"(a) Waiver. -- The Secretary may, upon making a record of the reasons therefor, reduce or waive any penalties provided for in this ~~Subchapter, except the penalty provided in G.S. 105-236 relating to unpaid checks.~~ Subchapter."

Section 18. G.S. 105-259(b)(15) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

- (15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:
 - a. The North Carolina Alcoholic Beverage Control Commission.

- b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.
- c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.
- d. Law enforcement agencies."

Section 19. G.S. 105-266(c)(1) reads as rewritten:

"(c) Statute of Limitations. -- The period in which a refund must be demanded or discovered under this section is determined as follows:

- (1) General Rule. -- No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later. An agreement by a taxpayer to extend the time in which the Department can assess the taxpayer for an underpayment automatically extends the time in which the taxpayer can request a refund."

Section 20. G.S. 105-449.65(a)(8) is repealed.

Section 21. G.S. 105-449.65(a)(9) is repealed.

Section 22. G.S. 105-449.87(a)(1) reads as rewritten:

"(a) Tax. -- An excise tax at the motor fuel rate is imposed on the following:

- (1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code. The tax does not apply, however, to dyed diesel fuel that is used to operate special mobile equipment."

Section 23. G.S. 105-449.97(b) reads as rewritten:

"(b) Administrative Discount. -- A supplier that files a timely return and sends a timely payment may deduct from the amount of tax payable with the return an administrative discount of one-tenth of one percent (0.1%) of the amount of tax payable to this State as the trustee, not to exceed eight thousand dollars (\$8,000) a month. The discount covers expenses incurred in collecting taxes on motor fuel."

Section 24. G.S. 105-449.106 reads as rewritten:

"§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit organizations, and taxicabs. taxicabs, and special mobile equipment.

(a) Government and Nonprofits. -- A local governmental entity or a nonprofit organization listed below that purchases and uses motor fuel may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. ~~Any of the following entities may receive a refund under this section:~~

- (1) ~~A county or a municipal corporation.~~

- (2) ~~A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.~~
- (3) ~~A volunteer fire department.~~
- (4) ~~A volunteer rescue squad.~~
- (5) ~~A sheltered workshop recognized by the Department of Health and Human Services.~~

An application for a refund allowed under this ~~section~~ subsection must be made in accordance with this Part and must be signed by the chief executive officer of the entity. The chief executive officer of a nonprofit organization is the president of the organization or another officer of the organization designated in the charter or bylaws of the organization.

Any of the following entities may receive a refund under this subsection:

- (1) A county or a municipal corporation.
- (2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.
- (3) A volunteer fire department.
- (4) A volunteer rescue squad.
- (5) A sheltered workshop recognized by the Department of Health and Human Services.

(b) Taxi. -- A person who purchases and uses motor fuel in a taxicab, as defined in G.S. 20-87(1), while the taxicab is engaged in transporting passengers for hire, or in a bus operated as part of a city transit system that is exempt from regulation by the North Carolina Utilities Commission under G.S. 62-260(a)(8), may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. An application for a refund must be made in accordance with this Part.

(c) Special Mobile Equipment. -- A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

Section 25. G.S. 105-449.116 is repealed.

Section 26. G.S. 20-50(a) reads as rewritten:

"(a) Except as otherwise provided in this Article, every owner of a vehicle intended to be operated upon any highway of this State must be registered with the Division in accordance with G.S. 20-52, and the owner of the vehicle must comply with G.S. 20-52 before operating the vehicle. A vehicle that is leased to an individual who is

~~a resident of this State is a vehicle intended to be operated upon a highway of this State, and required by this Article to be registered shall, before the same is so operated, apply to the Division for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in G.S. 20-79, or under temporary registration plates as provided in this Article: Provided that the~~

The Commissioner of Motor Vehicles or ~~his~~ the Commissioner's duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. ~~It is further provided that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a carrier of passengers or property and ~~it~~ the vehicle is actually used by ~~such~~ the carrier in the operation of its business, the ~~registration~~ license plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. ~~Provided further that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a farmer and ~~it~~ the vehicle is actually used by ~~such~~ the farmer in the operation of ~~his~~ a farm, the ~~registration~~ license plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require."

Section 27. G.S. 20-87(10) reads as rewritten:

"(10) Special Mobile Equipment. -- The fee for special mobile equipment for the license year or any part of the license year is ~~the same as~~ two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers."

Section 28. G.S. 20-116(a) reads as rewritten:

"(a) The total outside width of any vehicle or the load thereon shall not exceed 96 inches, except as otherwise provided in this ~~section. Provided that when~~ section. When hogsheds of tobacco are being transported, a tolerance of six inches ~~shall be allowed and that when is~~ allowed. When sheet or bale tobacco is being transported the load ~~does must~~ not exceed a width of 114 inches at the top of the load and the bottom of the load at the truck bed ~~does must~~ not exceed the width of 102 inches inclusive of allowance for load shifting or settling. Special mobile equipment is allowed a total outside width not to exceed 102 inches. ~~Provided, further, that vehicles~~ Vehicles (other than passenger buses) ~~which that~~ do not exceed the overall width of 102 inches and otherwise provided in this section may be operated in accordance with G.S. 20-115.1(c), (f), and (g)."

Section 29. G.S. 20-140.5 reads as rewritten:

"§ 20-140.5. Special mobile equipment may tow certain vehicles.

Special mobile equipment may ~~tow any of the following vehicles;~~
~~not tow any vehicle other than the following:~~

- (1) A single passenger vehicle that can carry no more than nine ~~passengers and is not loaded, in whole or in part, with passengers or property.~~ passengers and is carrying no passengers.
- (2) A single property-hauling vehicle that has a registered weight of 5,000 pounds or ~~less and is not loaded, in whole or in part, with passengers or property.~~ less, is carrying no passengers, and does not exceed its registered weight.

~~Special mobile equipment may not tow a vehicle that is not listed in this section."~~

Section 30. G.S. 110-129.2(g) reads as rewritten:

"(g) Other Uses of Directory Information. -- The ~~Employment Security Commission~~ following agencies may access information entered into the Directory from employer reports for the ~~purpose~~ purposes stated:

- (1) The Employment Security Commission for the purpose of administering employment security programs.
- (2) The North Carolina Industrial Commission may access information entered into the Directory from employer reports for the purpose of administering workers' compensation programs.
- (3) The Department of Revenue for the purpose of administering the taxes it has a duty to collect under Chapter 105 of the General Statutes."

Section 31. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 32. Sections 1, 1.1, and 27 of this act become effective January 1, 2000. Sections 2 and 14 of this act become effective July 1, 1999; Section 14 applies to purchases made on or after that date. Sections 5 through 11, 13, 15 through 17, and 22 of this act become effective October 1, 1999; Sections 15 through 17 apply to penalties assessed on or after that date. The remainder of this act is effective when it becomes law; Section 24 applies to taxes paid on or after January 1, 1999.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:26 p.m. on the 10th day of August, 1999.

H.B. 120

SESSION LAW 1999-439

AN ACT TO IMPROVE THE PROCEDURES FOR NOTIFYING OWNERS AND ADVERTISING TAX LIENS ON REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-369 reads as rewritten:

"§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.

(a) Report of unpaid Taxes that are Liens on Real Property. -- ~~On the first Monday in February in each year, each county tax collector and on the second Monday in February in each year, each municipal tax collector shall~~ In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real property, and the governing body shall thereupon property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body must order the tax collector to advertise such the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. -- After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the listing owner and to the record owner of each affected parcel of property, as determined as of December 31 of the fiscal year for which the taxes are due. The notice must be sent to each owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the listing owner that his or her name will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. Failure to mail the notice required by this section to the correct listing owner or record owner does not affect the validity of the tax lien or of any foreclosure action.

(c) Time and Contents of Advertisement. -- A tax collector's failure to comply with this subsection does not affect the validity of the taxes or tax liens. The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the

taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. ~~(If~~ If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is ~~permitted~~ permitted.

The posted notice and newspaper advertisement shall set forth the following information:

- (1) ~~The~~ In the case of property that the listing owner has not transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of each person to whom is listed real property on which the taxing unit has a lien for unpaid taxes, in alphabetical order.
- (1a) In the case of property that the listing owner has transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of the record owner as of December 31 of each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order, followed by a notation that the property was transferred to the record owner and a notation of the name of the listing owner.
- (1b) ~~together with a~~ After the information required by subdivision (1) or (1a) of this subsection for each parcel, a brief description of each parcel of land to which ~~such~~ a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.
- (2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.
- (3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the names of all newspapers in which advertisements will appear and the dates on which they will be published.
- (4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

~~Failure to comply with this subsection does not affect the validity of the taxes or tax liens.~~

(d) Costs. -- Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any reasonable basis. Advertising costs assessed pursuant to this ~~subsection (d) shall be deemed to be~~ subsection are taxes.

(e) Payments during Advertising Period. -- At any time during the advertisement period, any parcel may be withdrawn from the list by

payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but ~~if he fails to do so he shall not be liable for his~~ the tax collector is not liable for failure to make the deletion.

(f) Listing and Advertising in Wrong Name. -- No tax lien ~~shall be~~ is void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation if the property was in other respects correctly described on the abstract or in the advertisement.

(g) Wrongful Advertisement. -- Any tax collector or deputy tax collector who ~~shall willfully advertise~~ willfully advertises any tax lien knowing that the property is not subject to taxation or that the taxes advertised have been paid ~~shall be~~ is guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence."

Section 2. G.S. 105-375(b) reads as rewritten:

"(b) Docketing Certificate of Taxes as Judgment. -- In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to ~~file, no earlier than six months following the advertisement of tax liens, with the clerk of superior court~~ file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised, a certificate showing the following: the name of the taxpayer listing real property on which the taxes are a lien, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold."

Section 3. G.S. 105-375(e) reads as rewritten:

"(e) Special Assessments. -- Street, sidewalk, and other special assessments may be included in any judgment for taxes taken under ~~this section; or such section, or the special assessments may be included in a separate judgment docketed under this section, which is hereby declared to be made available~~ section. The tax collector may use such a judgment as a method of foreclosing the lien of special assessments. When used to foreclose the lien of special assessments, the procedure may be instituted at any time after the assessment or installment falls due and remains unpaid; ~~the six months' waiting period required by subsection (b), above, shall~~ (b) of this section does not apply to the foreclosure of special assessments."

Section 4. This act becomes effective January 1, 2001.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:29 p.m. on the 10th day of August, 1999.

H.B. 202

SESSION LAW 1999-440

AN ACT TO AMEND THE PROFESSIONAL CORPORATION ACT TO PERMIT CERTAIN EMPLOYEE RETIREMENT PLANS TO HOLD SECURITIES AS A LICENSEE AND TO REVISE THE DEFINITION OF A FOREIGN PROFESSIONAL CORPORATION THAT MAY BE AUTHORIZED TO DO BUSINESS IN THIS STATE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO ALLOW NONLICENSEES TO OWN UP TO FORTY-NINE PERCENT OF THE SHARES OF A PROFESSIONAL CORPORATION RENDERING CERTIFIED PUBLIC ACCOUNTANT SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-6 reads as rewritten:

"§ 55B-6. *Capital stock.*

(a) Except as provided in ~~subsection (b)~~, subsections (a1) and (b) of this section, a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer ~~such~~ shares of stock issued to ~~him the shareholder~~ only to another ~~such~~ licensee. No share or shares of any stock of ~~such a professional corporation~~ shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee ~~of such shares~~ is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, 89A, 89C, and 89E, for ~~non-licensed~~ nonlicensed employees of ~~such the corporation~~ to own not more than one-third of the total issued and outstanding shares of ~~such corporation~~, the corporation; and provided further, with respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this section to be a licensee if the trustee or trustees of the plan are licensees. Provided further, subject to any additional conditions that the appropriate licensing board may by rule or order impose in the public interest, it shall be lawful for individuals who are not licensees but who perform professional services on behalf of a professional corporation in another jurisdiction in which the corporation maintains an office, and who are duly licensed to perform professional services under the laws of the other jurisdiction, to be shareholders of the corporation so long as there is at least one shareholder who is a licensee as defined in G.S. 55B-2, and the corporation renders its professional services in the State only through those shareholders that are licensed in North Carolina. Upon the transfer of any shares of such corporation to a ~~non-licensed~~ nonlicensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name

and address of the transferee and the number of shares issued to ~~such the nonprofessional transferee. Any share of stock of such corporation issued or transferred~~ The issuance or transfer of any share of stock in violation of this section ~~shall be null and is~~ void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any ~~or all of his stock.~~ of the stock of a professional corporation.

(a) Any person may own up to forty-nine percent of the stock of a professional corporation rendering services under Chapter 93 of the General Statutes as long as:

- (1) Licensees continue to own and control voting stock that represents at least fifty-one percent (51%) of the votes entitled to be cast in the election of directors of the professional corporation; and
- (2) All licensees who perform professional services on behalf of the corporation comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

~~(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute the stock of the controlled corporation to one or more shareholders of the distributing corporation in accordance with section 355 of the Internal Revenue Code of 1986, as amended. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock was issued to the distributing corporation. A share of stock of the controlled corporation that has not been transferred to a licensee more than 30 days after it was issued to the distributing corporation is void.~~

(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute in accordance with section 355 of the Internal Revenue Code of 1986, as amended (or any succeeding section), the stock of the controlled corporation to one or more shareholders of the distributing corporation authorized under this section to hold the shares. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock is issued to the distributing corporation. A share of stock of the controlled corporation that is not transferred in accordance with this subsection within 30 days after the share was issued to the distributing corporation is void."

Section 2. G.S. 55B-16 reads as rewritten:

"§ 55B-16. Foreign professional corporations.

(a) A foreign professional corporation may apply for a certificate of authority to transact business in this State pursuant to the provisions of this Chapter and Chapter 55 of the General Statutes provided that:

- (1) The corporation obtains a certificate of registration from the appropriate licensing board or boards in this State;

- (2) With respect to each professional service practiced through the corporation in this State, at least one director and one officer shall be a licensee of the licensing board which regulates the profession in this State;
 - (3) Each officer, employee, and agent of the corporation who will provide professional services to persons in this State shall be a licensee of the appropriate licensing board in this State;
 - (4) The corporation shall be subject to the applicable rules and regulations adopted by, and all the disciplinary powers of, the appropriate licensing board or boards in this State;
 - (5) The corporation's activities in this State shall be limited as provided by G.S. 55B-14; and
 - (6) The application for certificate of authority, in addition to the requirements of G.S. 55-15-03, shall set forth the personal services to be rendered by the foreign professional corporation and the individual or individuals who will satisfy the requirements of G.S. 55B-16(a)(2) and shall be accompanied by a certification by the appropriate licensing board that each individual is a 'licensee' as defined in G.S. 55B-2(2) and by additional certifications as may be required to establish that the corporation is a 'foreign professional corporation' as defined in G.S. 55B-16(b).
- (b) For purposes of this section, 'foreign professional corporation' means a corporation for profit that:
- (1) Is incorporated under a law other than the law of this State;
 - (2) Is incorporated for the ~~sole and specific~~ purpose of rendering professional services of the type that if rendered in this State would require the obtaining of a license from a licensing board pursuant to the statutory provisions referred to in G.S. 55B-2(6); and
 - (3) Has as its shareholders only individuals who:
 - a. Qualify to hold shares of a corporation organized under this Chapter;
 - b. Are licensed to provide professional services as defined in G.S. 55B-2(6) in a state in which the corporation is incorporated or is authorized to transact business, provided that such professional services are the same as the professional service rendered by the corporation; ~~or~~
 - c. Are nonlicensed employees of a corporation rendering services of the type defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, provided that all such nonlicensed employees own no more than one-third of the total issued and outstanding shares of such corporation in the ~~aggregate~~ aggregate; or
 - d. With respect to a professional corporation rendering services under Chapter 93 of the General Statutes, are persons who own not more than forty-nine percent

(49%) of the stock in the professional corporation as long as:

1. Individuals who meet the requirements of subdivision a. or b. of this subdivision own and control voting stock that represents at least fifty-one percent (51%) of the votes entitled to be cast in the election of directors of the professional corporation; and
2. All licensees who perform professional services on behalf of the corporation in this State comply with Chapter 93 of the General Statutes and the rules adopted thereunder.

(b1) With respect to a professional corporation rendering services as defined in Chapters 83A, 89A, 89C, and 89E of the General Statutes, an employee retirement plan qualified under section 401 of the Internal Revenue Code of 1986, as amended (or any successor section), is deemed for purposes of this section to be an individual licensee if at least one trustee of the plan is a licensee and all other trustees are licensees or are individuals who are licensed under the laws of a state in which the corporation maintains an office to perform at least one of the professional services, as defined in Chapter 83A, 89A, 89C, or 89E of the General Statutes, rendered by the corporation.

(c) A foreign professional corporation with a valid certificate of authority has the same but no greater rights and ~~has the same but no greater~~ privileges as, and is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic professional corporation of like character, except that the provisions of G.S. 55B-6 and G.S. 55B-7 ~~shall~~ do not apply."

Section 3. G.S. 93-12(8b) reads as rewritten:

"(8b) To formulate rules ~~and regulations~~ for the continuing professional education of all persons holding the certificate of certified public accountant, subject to the following provisions:

- a. After January 1, 1983, any person desiring to obtain or renew a certificate as a certified public accountant must offer evidence satisfactory to the Board that ~~such~~ the person has complied with the continuing professional education requirement approved by the Board. The Board may grant a conditional license for not more than 12 months for persons who are being licensed for the first time, or moving into North Carolina, or for other good cause, in order that ~~such~~ the person may comply with the continuing professional education requirement.
- b. The Board shall ~~promulgate rules and regulations~~ adopt rules for the administration of the continuing professional education requirement with a minimum number of hours of 20 and a maximum number of

hours of 40 per year, and the Board may exempt persons who are retired or inactive from ~~said~~ the continuing professional education requirement. The Board may also permit any certified public accountant to accumulate hours of continuing professional education in any calendar year of as much as two additional years annual requirement in advance of or subsequent to the required calendar year.

- c. Any applicant who offers satisfactory evidence on forms promulgated by the Board that ~~he~~ the applicant has participated in a continuing professional education program of the type required by the Board shall be deemed to have complied with this ~~section~~ subdivision."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:46 p.m. on the 10th day of August, 1999.

H.B. 247

SESSION LAW 1999-441

AN ACT TO REGULATE FUNERAL PROCESSIONS AND TO CODIFY THE RULES OF THE ROAD WITH REGARD TO FUNERAL PROCESSIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"§ 20-157.1. Funeral processions.

(a) As used in this section, a 'funeral procession' means two or more vehicles accompanying the remains of a deceased person, or traveling to the church, chapel, or other location at which the funeral services are to be held, in which the lead vehicle is either a State or local law enforcement vehicle, other vehicle designated by a law enforcement officer or the funeral director, or the lead vehicle displays a flashing amber or purple light, sign, pennant, flag, or other insignia furnished by a funeral home indicating a funeral procession.

(b) Each vehicle in the funeral procession shall be operated with its headlights illuminated, if so equipped, and its hazard warning signal lamps illuminated, if so equipped.

(c) The operator of the lead vehicle in a funeral procession shall comply with all traffic-control signals, but when the lead vehicle in a funeral procession has progressed across an intersection in accordance with the traffic-control sign or signal, or when directed to do so by a law enforcement officer or a designee of a law enforcement officer or the funeral director, or when the lead vehicle is a law enforcement vehicle which progresses across the intersection while giving appropriate warning by light or siren, all vehicles in the funeral

procession may proceed through the intersection without stopping, except that the operator of each vehicle shall exercise reasonable care towards any other vehicle or pedestrian on the highway. An operator of a vehicle that is not part of the funeral procession shall not join the funeral procession for the purpose of securing the right-of-way granted by this subsection.

(d) Operators of vehicles in a funeral procession shall drive on the right-hand side of the roadway and shall follow the vehicle ahead as closely as reasonable and prudent having due regard for speed and existing conditions.

(e) Operators of vehicles in a funeral procession shall yield the right-of-way to law enforcement vehicles, fire protection vehicles, rescue vehicles, ambulances, and other emergency vehicles giving appropriate warning signals by light or siren and shall yield the right-of-way when directed to do so by a law enforcement officer.

(f) Operators of vehicles in a funeral procession shall proceed at the posted minimum speed, except that the operator of such vehicle shall exercise reasonable care having due regard for speed and existing conditions.

(g) The operator of a vehicle proceeding in the opposite direction as a funeral procession may yield to the funeral procession. If the operator chooses to yield to the procession, the operator must do so by reducing speed, or by stopping completely off the roadway when meeting the procession or while the procession passes, so that operators of other vehicles proceeding in the opposite direction of the procession can continue to travel without leaving their lane of traffic.

(h) The operator of a vehicle proceeding in the same direction as a funeral procession shall not pass or attempt to pass the funeral procession, except that the operator of such a vehicle may pass a funeral procession when the highway has been marked for two or more lanes of moving traffic in the same direction of the funeral procession.

(i) An operator of a vehicle shall not knowingly drive between vehicles in a funeral procession by crossing their path unless directed to do so by a person authorized to direct traffic. When a funeral procession is proceeding through a steady or strobe-beam stoplight emitting a red light as permitted by subsection (c), an operator of a vehicle that is not in the funeral procession shall not enter the intersection knowing a funeral procession is in progress, even if facing a steady or strobe-beam stoplight emitting a green light, unless the operator can do so safely without crossing the path of the funeral procession.

(j) Nothing in this section shall be construed to prevent State or local law enforcement officers from escorting funeral processions in law enforcement vehicles.

(k) A violation of this section shall not constitute negligence per se.

(l) To the extent that a local government unit's ordinance is in direct conflict with any part of this statute, the ordinance shall control and prevail over the conflicting part.

(m) A violation of this section shall not be considered a moving violation for purposes of G.S. 58-36-65 or G.S. 58-36-75."

Section 2. This act becomes effective December 1, 1999, and applies to violations occurring on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 9:49 p.m. on the 10th day of August, 1999.

H.B. 291

SESSION LAW 1999-442

AN ACT TO PROVIDE THAT THE GOVERNOR SHALL HAVE THE POWER TO PLACE INDIVIDUALS AND UNITS OR PARTS OF UNITS OF THE NORTH CAROLINA NATIONAL GUARD TO ASSIST WITH STATE INAUGURAL ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 127A-16 reads as rewritten:

"§ 127A-16. Governor as commander in chief.

(a) The Governor shall be commander in chief of the militia and shall have power to call out the militia to execute the laws, secure the safety of persons and property, suppress riots or insurrections, repel invasions and provide disaster relief.

(b) The Governor shall have the additional power, subject to the availability of funding, to place individuals, units, or parts of units of the North Carolina National Guard in a State Active Duty status to assist with the planning, support, and execution of activities connected with the swearing in and installation of the Governor and other members of the Council of State."

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 9:58 p.m. on the 10th day of August, 1999.

H.B. 512

SESSION LAW 1999-443

AN ACT TO CERTIFY ASSISTED LIVING RESIDENCE ADMINISTRATORS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 20A.

"Assisted Living Administrator Act.

"§ 90-288.10. Title.

This Article shall be known as the Assisted Living Administrator Act.

"§ 90-288.11. Purpose.

The administrators of assisted living residences are responsible for the residents who require daily care to attend to their physical, mental, and emotional needs. Therefore, the certification of assisted living administrators is necessary to ensure adequate levels of care across the State and to protect public health, safety, and welfare.

"§ 90-288.12. Certification required; exemptions.

(a) No person shall perform or offer to perform services as an assisted living administrator unless the person has been certified under the provisions of this Article. A certificate granted under this Article shall be valid throughout the State.

(b) The provisions of this Article shall not apply to:

- (1) Combination homes as defined in G.S. 131E-101 and hospitals that contain adult care beds.
- (2) Family care homes as defined in G.S. 131D-2(a)(5).
- (3) Continuing care facilities, as defined in Article 64 of Chapter 58 of the General Statutes, if adult care beds are housed in the same facility as nursing home beds.

"§ 90-288.13. Definitions.

The following definitions apply in this Article:

- (1) Administrator-in-training. -- An individual who serves a training period under the supervision of an approved preceptor.
- (2) Assisted living administrator. -- An individual certified to operate, administer, manage, and supervise an assisted living residence or to share in the performance of these duties with another person who has been so certified.
- (3) Assisted living residence. -- A facility defined in G.S. 131D-2(a)(1d), whether proprietary or nonprofit. The term also includes institutions or facilities that are owned or administered by the federal or State government or any agency or political subdivision of the State government.
- (4) Department. -- The Department of Health and Human Services.
- (5) Preceptor. -- An individual who is certified by the Department as an assisted living administrator and who meets the requirements established by the Department to serve as a supervisor of administrators-in-training.

"§ 90-288.14. Assisted living administrator certification.

An applicant shall be certified by the Department as an assisted living administrator if the applicant meets all of the following qualifications:

- (1) Is at least 21 years old.
- (2) Provides a satisfactory criminal background report from the State Repository of Criminal Histories, which shall be provided by the State Bureau of Investigation upon its receiving fingerprints from the applicant. If the applicant has been a resident of this State for less than five years, the applicant shall provide a satisfactory criminal background

report from both the State and National Repositories of Criminal Histories.

- (3) Successfully completes the equivalent of two years of coursework at an accredited college or university or has a combination of education and experience as approved by the Department.
- (4) Successfully completes a Department approved administrator-in-training program of at least 120 hours of study in courses relating to assisted living residences.
- (5) Successfully completes a written examination administered by the Department.

"§ 90-288.15. Issuance, renewal, and replacement of certificates.

(a) The Department shall issue a certificate to any applicant who has satisfactorily met the requirements of this Article. The certificate shall show the full name of the person and an identification number and shall be signed by the Secretary of the Department. A certificate may not be transferred or assigned.

(b) All certificates shall expire on December 31 of the second year following issuance. All applications for renewal shall be filed with the Department and shall be accompanied by documentation of the certificate holder's completion of the annual continuing education requirements established by the Department regarding the management and operation of an assisted living residence.

(c) The Department shall replace any certificate that is lost, destroyed, or mutilated subject to rules established by the Department.

"§ 90-288.16. Certification by reciprocity.

The Department may grant, upon application, a certificate to a person who holds a valid certificate as an assisted living community administrator issued by another state if, in the Department's determination, the standards of competency for the certificate are substantially equivalent to those in this State.

"§ 90-288.17. Posting certificates.

Every person issued a certificate under this Article shall display the certificate prominently in the assisted living residence where the person works.

"§ 90-288.18. Adverse action on a certificate.

(a) Subject to subsection (b) of this section, the Department shall have the authority to deny a new or renewal application for a certificate, and to amend, recall, suspend, or revoke an existing certificate upon a determination that there has been a substantial failure to comply with the provisions of this Article or any rules promulgated under this Article.

(b) The provisions of Chapter 150B of the General Statutes shall govern all administrative action and judicial review in cases where the Department has taken action as described in subsection (a) of this section. A petition for a contested case shall be filed within 30 days after the Department mails the certificate holder a notice of its decision to deny a renewal application, or to recall, suspend, or revoke an existing certificate.

"§ 90-288.19. Reporting requirement.

The holder of a facility license issued pursuant to G.S. 131D-2 shall report any incidents of suspected abuse, neglect, or exploitation of persons residing in an assisted living residence by a person certified under this Article to the Health Care Personnel Registry.

"§ 90-288.20. Penalties.

A person who serves as an assisted living administrator without first obtaining a certificate from the Department is guilty of a Class 1 misdemeanor. Each act of unlawful practice constitutes a distinct and separate offense."

Section 2. G.S. 131D-2(a)(1b) reads as rewritten:

"(1b) "Adult care home" is an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes. ~~Adult care homes and family care homes are subject to licensure by the Division of Facility Services."~~

Section 3. Notwithstanding the provisions of G.S. 90-288.14, as enacted in Section 1 of this act, the Department shall prior to December 31, 1999, grant a certificate to practice as an assisted living administrator to a person who has been actively engaged as an assisted living administrator in this State for at least one year. Any person who has been actively engaged as an assisted living administrator for less than one year shall satisfactorily complete a written exam administered by the Department before issuance of a license. The Department may refuse to certify a person as an assisted living administrator if the person's compliance history review shows a pattern of noncompliance with State law or otherwise demonstrates disregard for the health safety, and welfare of residents in current or past facilities where the person has worked as an assisted living administrator.

2000.

Section 4. This act becomes effective January 1, 2000.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 10:01 p.m. on the 10th day of August, 1999.

H.B. 661

SESSION LAW 1999-444

AN ACT TO AMEND THE JUVENILE CODE TO REVISE THE COMMUNITY SERVICE DISPOSITIONAL ALTERNATIVE FOR JUVENILE OFFENDERS WHO HAVE BEEN ADJUDICATED DELINQUENT FOR LEVEL 2 OFFENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7B-2506(23) reads as rewritten:

"(23) Order the juvenile to perform up to 200 hours supervised community service ~~of not less than 100 hours and not more than 200 hours~~, consistent with the juvenile's age, skill, and ability, specifying the nature of work and the number of hours required. The work shall be related to the seriousness of the juvenile's offense."

Section 2. This act becomes effective July 1, 1999, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 10:05 p.m. on the 10th day of August, 1999.

H.B. 937

SESSION LAW 1999-445

AN ACT TO AMEND THE REGIONAL TRANSPORTATION AUTHORITY ACT CONCERNING JURISDICTION OF THE ENTIRE AREA OF THE COUNTY IN CERTAIN CIRCUMSTANCES AND MEMBERSHIP OF THE AUTHORITY, AND TO AUTHORIZE THE AUTHORITY TO CREATE SPECIAL TAX DISTRICTS WITHIN ITS JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-634(a) reads as rewritten:

"(a) The territorial jurisdiction and service area of the Authority shall be as determined by the Board of Trustees consistent with its purpose, but shall initially consist of those areas included within the Metropolitan Planning Organization boundaries. With the consent by resolution of the affected board of county commissioners, the jurisdiction and area may be expanded to include contiguous areas, but the total jurisdiction and service area shall not exceed part or all of 12 counties. The jurisdiction and area include the entire area of the county if the Board of Trustees has been expanded to include the chair or other member of the board of commissioners of that county pursuant to G.S. 160A-635(a)(4)."

Section 2. G.S. 160A-635(a) reads as rewritten:

"(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of:

- (1) The mayor of the four cities within the service area that have the largest population, or a member of the city council designated by the city council to serve in the absence of the mayor.
- (2) Two members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.
- (3) The chair of each Metropolitan Planning Organization in the territorial jurisdiction.
- (4) The chair of the board of commissioners of any county within the territorial jurisdiction or a member of the board of commissioners designated by the board to serve in the absence of the chair, but only if the Board of Trustees by resolution has expanded the Board of Trustees to include the chair of the board of commissioners of that county and the board of commissioners of that county has consented by resolution.
- (5) The chair of the principal airport authority or airport commission of each of the two most populous counties within the territorial jurisdiction, as determined by the most recent decennial federal census. The chair of the airport authority or airport commission may appoint a designee. The designee is not required to be a member of the airport authority or airport commission."

Section 3. G.S. 105-551 reads as rewritten:

"§ 105-551. *Tax on gross receipts authorized.*

(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting U-drive-it passenger vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes.

(b) Restrictions. -- The board of trustees of an Authority may not levy a tax under this section or increase the tax rate of a tax levied under this section until all of the following requirements have been met:

- (1) The board of trustees has held a public hearing on the tax or the increase in the tax rate after giving at least 10 days' notice of the hearing.
- (2) If the Authority has a special tax board, the special tax board has adopted a resolution approving the levy of the tax or the increase in the tax rate.
- (3) The board of commissioners of each county included in the territorial jurisdiction of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(c) Special Tax District. -- If a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes has not levied the tax under this section or has levied the tax at a rate of less than five percent (5%), it may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The rate of tax levied within the special district may not, when combined with the rate levied within the entire territorial jurisdiction of the authority, exceed five percent (5%). The regional transportation authority may not levy or increase a tax within the special district unless the board of commissioners of each county in the special district has adopted a resolution approving the levy or increase.

A special district created pursuant to this subsection is a body corporate and politic and has the power to carry out the purposes of this subsection. The board of trustees of the regional transportation authority created under Article 27 of Chapter 160A of the General Statutes shall serve, ex officio, as the governing body of a special district it creates pursuant to this subsection. The proceeds of a tax levied under this subsection may be used only for the benefit of the special district and only for the purposes provided in G.S. 105-554. Except as provided in this subsection, a tax levied under this subsection is governed by the provisions of this Article."

Section 4. G.S. 105-561 reads as rewritten:

"§ 105-561. Authority registration tax authorized.

(a) Tax Authorized. -- The board of trustees of an Authority may, by resolution, levy an annual license tax in accordance with this Article upon any motor vehicle with a tax situs within its territorial jurisdiction. The purpose of the tax levied under this Article is to raise revenue for capital and operating expenses of an Authority in providing public transportation systems. The rate of tax levied under this Article must be a full dollar amount, but may not exceed five dollars (\$5.00) a year.

(b) Restrictions. -- The board of trustees of an Authority may not levy a tax under this Article or increase the tax rate until all of the following requirements have been met:

- (1) The board of trustees has held a public hearing on the tax or the increase in the tax rate after giving at least 10 days' notice of the hearing.
- (2) If the Authority has a special tax board, the special tax board has adopted a resolution approving the levy of the tax or the increase in the tax rate.
- (3) Except where the levy or increase in tax is necessary for debt service on bonds or notes that each of the boards of county commissioners had previously approved under G.S. 159-51, the board of commissioners of each county included in the territorial jurisdiction of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(c) Resolutions. -- The board of trustees and the board of county commissioners, upon adoption of a resolution pursuant to this section, shall cause a certified copy of the resolution to be delivered immediately to the Authority and to the Division of Motor Vehicles.

(d) Special Tax District. -- If a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes has not levied the tax under this section or has levied the tax at a rate of less than five dollars (\$5.00) it may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The rate of tax levied within the special district may not, when combined with the rate levied within the entire territorial jurisdiction of the authority, exceed five dollars (\$5.00). The regional transportation authority may not levy or increase a tax within the special district unless the board of commissioners of each county in the special district has adopted a resolution approving the levy or increase.

A special district created pursuant to this subsection is a body corporate and politic and has the power to carry out the purposes of this subsection. The board of trustees of the regional transportation authority created under Article 27 of Chapter 160A of the General Statutes shall serve, ex officio, as the governing body of a special district it creates pursuant to this subsection. The proceeds of a tax levied under this subsection may be used only for the benefit of the special district and only for the purposes provided in G.S. 105-564. Except as provided in this subsection, a tax levied under this subsection is governed by the provisions of this Article."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 10:10 p.m. on the 10th day of August, 1999.

H.B. 1173

SESSION LAW 1999-446

AN ACT TO LIMIT DISCLOSURE OF PERSONAL INFORMATION CONTAINED IN APPLICATIONS FOR LICENSES ISSUED BY THE PRIVATE PROTECTIVE SERVICES BOARD AND THE ALARM SYSTEMS LICENSING BOARD AND TO AUTHORIZE THE ALARM SYSTEMS LICENSING BOARD TO ISSUE AN APPRENTICESHIP REGISTRATION PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74C-8 is amended by adding a new subsection to read:

"(g) Except for purposes of administering the provisions of this section and for law enforcement purposes, the home address or telephone number of an applicant, licensee, or the spouse, children,

or parents of an applicant or licensee is confidential under G.S. 132-1.2, and the Board shall not disclose this information unless the applicant or licensee consents to such disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also his or her business address and telephone number. Violation of this subsection shall constitute a Class 3 misdemeanor."

Section 2. G.S. 74D-2 is amended by adding a new subsection to read:

"(f) Except for purposes of administering the provisions of this section and for law enforcement purposes, the home address or telephone number of an applicant, licensee, or the spouse, children, or parents of an applicant or licensee is confidential under G.S. 132-1.2, and the Board shall not disclose this information unless the applicant or licensee consents to such disclosure. The provisions of this subsection shall not apply when a licensee's home address or telephone number is also his or her business address and telephone number. Violation of this subsection shall constitute a Class 3 misdemeanor."

Section 3. Chapter 74D of the General Statutes is amended by adding a new section to read:

"§ 74D-8.1. *Apprenticeship registration permit.*

(a) The Board may issue an apprenticeship registration permit to an applicant who is 16 or 17 years old and currently enrolled in high school if the applicant holds a valid drivers license and submits at least three letters of recommendation stating that the applicant is of good moral character as provided in G.S. 74D-2(d)(2). The letters of recommendation shall be from persons who are not related to the individual, and at least one of the letters shall be from an official at the school where the applicant is currently enrolled.

(b) There shall be no fee for an apprenticeship registration permit, and the permit shall expire when the holder attains the age of 18 years. The denial, suspension, or revocation of an apprenticeship registration permit shall be in accordance with the provisions of Chapter 150B of the General Statutes.

(c) The applicant shall not perform services as authorized under this Chapter until after the Board has reviewed his or her application and issued him or her an apprenticeship registration permit. The holder of an apprenticeship registration permit shall be accompanied by a licensee or registered employee while engaged in activities authorized under this Chapter."

Section 4. Sections 1 and 2 of this act become effective December 1, 1999, and apply to offenses committed on or after that date. The remainder of this act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 10:14 p.m. on the 10th day of August, 1999.

H.B. 1209

SESSION LAW 1999-447

AN ACT TO IMPROVE BOATING SAFETY BY AMENDING THE STATE LAW REGULATING PERSONAL WATERCRAFT OPERATION TO CONFORM WITH THE RECOMMENDATIONS OF THE NATIONAL ASSOCIATION OF STATE BOATING LAW ADMINISTRATORS AND TO OTHERWISE IMPROVE PERSONAL WATERCRAFT SAFETY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-13.3 reads as rewritten:

"§ 75A-13.3. *Personal watercraft.*

(a) No person shall operate a personal watercraft on the waters of this State at any time between ~~the hours from one hour after sunset to one hour before~~ and sunrise. For purposes of this section, "personal watercraft" means a small vessel which uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the ~~vehicle,~~ vessel.

(b) Except as otherwise provided in this subsection, no person under 16 years of age shall operate a personal watercraft on the waters of this State, ~~nor shall~~ and it is unlawful for the owner of a personal watercraft or a person who has temporary or permanent responsibility for a person under the age of 16 to knowingly allow ~~a person under the age of 16~~ that person to operate a personal watercraft. A person of at least ~~13~~ 12 years of age but under 16 years of age may operate a personal watercraft on the waters of this State if:

- (1) The person is accompanied by a person of at least ~~16~~ 18 years of age who physically occupies the watercraft; or
- (2) The person (i) possesses ~~a boating safety certificate or a photographic identification card certifying that the person has completed a boating safety course approved by the United States Coast Guard Auxiliary,~~ on his or her person while operating the watercraft, identification showing proof of age and a boater safety certification card issued by the Wildlife Resources Commission or proof of other satisfactory completion of a boating safety education course approved by the National Association of State Boating Law Administrators (NASBLA); and (ii) produces that identification and certification card upon the request of an officer of the Wildlife Resources Commission or local law enforcement agency.

(c) No livery shall lease, hire, or rent a personal watercraft to or for operation by a person under 16 years of age, except as provided in subsection (b) of this section.

(c1) It shall be unlawful for any person, firm, or corporation to engage in the business of renting personal watercraft to the public for operation by the rentee unless such person, firm, or corporation has secured insurance for his own liability and that of his rentee, in such an amount as is hereinafter provided, from an insurance company duly authorized to sell liability insurance in this State. Each such personal watercraft rented must be covered by a policy of liability insurance insuring the owner and rentee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such personal watercraft, subject to the following minimum limits: three hundred thousand dollars (\$300,000) per occurrence.

(d) No person shall operate a personal watercraft on the waters of this State, nor shall the owner of a personal watercraft knowingly allow another person to operate that personal watercraft on the waters of this State, unless:

- (1) Each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device approved by the United States Coast Guard; ~~Guard~~. Inflatable personal flotation devices do not satisfy this requirement; and
- (2) In the case of a personal watercraft equipped by the manufacturer with a lanyard-type engine cut-off switch, the lanyard is securely attached to the person, clothing, or flotation device of the operator at all times while the personal watercraft is being operated in such a manner to turn off the engine if the operator dismounts while the watercraft is in operation.

(d1) No person shall operate a personal watercraft towing another person on water skis or other devices unless:

- (1) The personal watercraft has on board, in addition to the operator, an observer who shall monitor the progress of the person or persons being towed, or the personal watercraft is equipped with a rearview mirror; and
- (2) The total number of persons operating, observing, and being towed does not exceed the number of passengers identified by the manufacturer as the maximum safe load for the vessel.

(e) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers that endanger life, limb, or ~~property, including:~~ property shall constitute reckless operation of a vessel as provided in G.S. 75A-10, and include:

- (1) Unreasonably or unnecessarily weaving through congested vessel traffic;

- (2) ~~Jumping the wake of another vessel unreasonably or unnecessarily close of within 100 feet of such other vessel or when visibility around such other vessel is obstructed; and~~
- (3) ~~Intentionally approaching another vessel in order to swerve at the last possible moment to avoid collision~~ collision;
- (4) Operating at greater than no-wake speed within 100 feet of an anchored or moored vessel, the shoreline, a dock, pier, swim float, marked swimming area, swimmers, surfers, persons engaged in angling, or any manually operated propelled vessel; and
- (5) Operating contrary to the "rules of the road" or following too closely to another vessel, including another personal watercraft. For purposes of this subdivision, "following too closely" means proceeding in the same direction and operating at a speed in excess of 10 miles per hour when approaching within 100 feet to the rear or 50 feet to the side of another vessel that is underway unless that vessel is operating in a narrow channel, in which case a personal watercraft may operate at the speed and flow of other vessel traffic.
~~shall constitute reckless operation of a vessel as provided in G.S. 75A-10.~~

(f) The provisions of this section do not apply to a performer engaged in a professional exhibition, a person or persons engaged in an activity authorized under G.S. 75A-14, or a person attempting to rescue another person who is in danger of losing life or limb.

~~(g) This section applies only to that portion of the waters of the upper Catawba River found within Alexander, Burke, Caldwell, Catawba, Iredell, Lincoln, McDowell, and Mecklenburg Counties, beginning where the US Highway 221 bridge crosses the Catawba River in McDowell County and extending downstream to the Cowans Ford Dam. The provisions of G.S. 75A-13.2 shall not apply to the region covered by this section.~~

(h) Nothing in this section prohibits units of local government, marine commissions, or local wake authorities from regulating personal watercraft pursuant to the provisions of G.S. 160A-176.2 or any other law authorizing such regulation, provided that the regulations are more restrictive than the provisions of this section or regulate aspects of personal watercraft operation that are not covered by this section. Whenever a unit of local government, marine commission, or local wake authority regulates personal watercraft pursuant to this subsection, it shall conspicuously post signs that are reasonably calculated to provide notice to personal watercraft users of the stricter regulations."

Section 2. G.S. 75A-18 is amended by adding a new subsection to read:

"(c1) Any boat livery that fails to carry liability insurance in violation of G.S. 75A-13.3(c1) shall be guilty of a Class 2

misdemeanor and shall only be subject to a fine not to exceed one thousand dollars (\$1,000)."

Section 3. G.S. 75A-13.2 is repealed.

Section 4. This act becomes effective December 1, 1999, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 10:17 p.m. on the 10th day of August, 1999.

S.B. 1049

SESSION LAW 1999-448

AN ACT TO AMEND AND CODIFY THE LAW THAT PROVIDES FOR COMPENSATORY MITIGATION AS AN ALTERNATIVE TO THE MAINTENANCE OF RIPARIAN BUFFERS AND THAT AUTHORIZES THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE RESPONSIBILITY FOR THE IMPLEMENTATION AND ENFORCEMENT OF THE STATE'S RIPARIAN BUFFER PROTECTION REQUIREMENTS TO LOCAL GOVERNMENTS, AS RECOMMENDED BY THE NEUSE RIVER BUFFER RULES STAKEHOLDER ADVISORY COMMITTEE AND REQUESTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION.

Whereas, in 1996 the General Assembly established a goal to reduce the average annual load of nitrogen delivered from point and nonpoint sources to the Neuse River Estuary by a minimum of thirty percent (30%) of the average load for the period 1991 through 1995 by the year 2001 and directed the Environmental Management Commission to develop and adopt a plan to achieve this goal; and

Whereas, in 1997 the General Assembly directed the Environmental Management Commission to develop and implement a basinwide water quality plan for each of the State's 17 major river basins; and

Whereas, in 1997, in response to these legislative mandates, the Environmental Management Commission adopted a Neuse River Nutrient Sensitive Waters Management Strategy as temporary and permanent rules and adopted revisions to these rules in 1998; and

Whereas, in 1998 the General Assembly enacted legislation to disapprove 15A NCAC 2B.0233 (Neuse River Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation) as a permanent rule while continuing this rule in effect as a temporary rule with certain modifications until the Environmental Management Commission adopted a revised temporary and permanent rule; and

Whereas, the 1998 legislation established a Stakeholder Advisory Committee to assist the Environmental Management Commission with the development of (i) a revised temporary rule, (ii) rules and recommended legislation to provide for compensatory mitigation as an

alternative to the maintenance of riparian buffers, and (iii) rules and recommended legislation to authorize the Environmental Management Commission to delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements to local governments; and

Whereas, the Stakeholder Advisory Committee, after many hours of work, submitted a report and recommendations to the Environmental Management Commission; and

Whereas, that report included recommended legislation pertaining to compensatory mitigation and delegation to local governments; and

Whereas, at its meeting on 8 April 1999, the Environmental Management Commission accepted these recommendations and forwarded them to the Environmental Review Commission; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"§ 143-214.20. Riparian Buffer Protection Program: Alternatives to maintaining riparian buffers; compensatory mitigation fees.

(a) The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with laws and rules that require that riparian buffers be protected and maintained. Alternatives shall include, but are not limited to:

- (1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund.
- (2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an interest in real property only if the real property or interest in real property either:
 - a. Is a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost; or
 - b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided

by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

- (3) Restoration or enhancement of an existing riparian buffer that is not otherwise required to be protected, or creation of a new riparian buffer, that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.
- (4) Construction of an alternative measure that reduces nutrient loading as well or better than the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(b) Compensatory mitigation is available for loss of a riparian buffer along an intermittent stream, a perennial stream, or a perennial waterbody.

(c) The Commission shall establish a standard schedule of compensatory mitigation fees. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality in the same river basin as that provided by the riparian buffer this is lost by:

- (1) Restoration or enhancement of existing riparian buffers.
- (2) Acquisition of land for and creation of new riparian buffers.
- (3) Maintenance and monitoring of restored, enhanced, or created riparian buffers over time.
- (4) Construction of alternative measures that reduce nutrient loading.

(d) The Commission may adopt rules to implement this section.

"§ 143-215.23. Riparian Buffer Protection Program: Delegation of riparian buffer protection requirements to local governments.

(a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements to units of local government that have the power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved, approved with

modifications, or disapproved. The Commission shall not approve a delegation unless the Commission finds that local implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that a unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Department shall provide a stream identification training program to train individuals to determine the existence of surface water for purposes of rules adopted by the Commission for the protection and maintenance of riparian buffers. The Department may charge a fee to cover the full cost of the training program. No fee shall be charged to an employee of the State who attends the training program in connection with the employee's official duties.

(f) The Commission may adopt rules to implement this section."

Section 2. G.S. 143-214.21 reads as rewritten:

"§ 143-214.21. *Riparian Buffer Protection Program: Riparian Buffer Restoration Fund.*

The Riparian Buffer Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Riparian Buffer Restoration Fund shall provide a repository for monetary contributions to promote projects for the restoration, enhancement, or creation of riparian buffers or to construct approved alternative measures that reduce nutrient loading as well or better than the riparian buffer that is lost and for compensatory mitigation fees paid to the Department. The Fund shall be administered by the Division of Water Quality within the Department. ~~Monies~~ [Moneys] Moneys shall be expended from the Fund only for those purposes directly related to the restoration, acquisition, creation, enhancement, and maintenance of riparian buffers or to construct approved alternative measures that reduce nutrient loading as well or better than the riparian buffer that is lost to offset the benefits to water quality, including the removal of nutrients, lost through the loss of buffers. Compensatory mitigation fees paid into the Fund in connection with

the loss of riparian buffers in a river basin and the interest earned on those fees may be used only for projects in that river basin."

Section 3. The catch line to G.S. 143-214.22 reads as rewritten:

"§ 143-214.22. Riparian Buffer Protection Program: Department may accept donations of real property."

Section 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 10:22 p.m. on the 10th day of August, 1999.

H.B. 1279

SESSION LAW 1999-449

AN ACT TO CREATE THE CRIMINAL OFFENSE OF FINANCIAL IDENTITY FRAUD AND TO ALLOW FOR THE RECOVERY OF DAMAGES FOR FINANCIAL IDENTITY FRAUD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 19C.

"Financial Identity Fraud.

"§ 14-113.20. Financial identity fraud.

(a) A person who knowingly obtains, possesses, or uses personal identifying information of another person without the consent of that other person, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences is guilty of a felony punishable as provided in G.S. 14-113.22(a).

(b) The term 'identifying information' as used in this section includes the following:

- (1) Social security numbers.
- (2) Drivers license numbers.
- (3) Checking account numbers.
- (4) Savings account numbers.
- (5) Credit card numbers.
- (6) Debit card numbers.
- (7) Personal Identification (PIN) Code as defined in G.S. 14-113.8(8).
- (8) Electronic identification numbers.
- (9) Digital signatures.
- (10) Any other numbers or information that can be used to access a person's financial resources.

(c) It shall not be a violation under this section for a person to do any of the following:

- (1) Lawfully obtain credit information in the course of a bona fide consumer or commercial transaction.
- (2) Lawfully exercise, in good faith, a security interest or a right of offset by a creditor or financial institution.
- (3) Lawfully comply, in good faith, with any warrant, court order, levy, garnishment, attachment, or other judicial or administrative order, decree, or directive, when any party is required to do so.

"§ 14-113.21. Venue of offenses.

In any criminal proceeding brought under G.S. 14-113.20, the crime is considered to be committed in any county in which any part of the financial identity fraud took place, regardless of whether the defendant was ever actually present in that county.

"§ 14-113.22. Punishment and liability.

(a) A violation of G.S. 14-113.20 is punishable as a Class H felony, except if the victim suffers arrest, detention, or conviction as a proximate result of the offense, then the violation is punishable as a Class G felony.

(b) Notwithstanding subsection (a) of this section, any person who knowingly obtains, possesses, or uses personal identifying information of another person without the consent of that other person, with the intent to fraudulently represent that the person is the other person for the purposes of making financial or credit transactions in the other person's name or for the purpose of avoiding legal consequences, shall be liable to the other person for civil damages of up to five thousand dollars (\$5,000) for each incident, or three times the amount of actual damages, if any, sustained by the person damaged, whichever amount is greater. A person damaged as set forth in this subsection may also institute a civil action to enjoin and restrain future acts which would constitute a violation of this subsection. The court, in an action brought under this subsection, may award reasonable attorneys' fees to the prevailing party.

(c) In any case in which a person obtains identifying information of another person in violation of G.S. 14-113.20, uses that information to commit a crime in addition to a violation of G.S. 14-113.20, and is convicted of that additional crime, the court records shall reflect that the person whose identity was falsely used to commit the crime did not commit the crime.

"§ 14-113.23. Authority of the Attorney General.

The Attorney General may investigate any complaint regarding financial identity fraud under this Article. In conducting these investigations, the Attorney General has all the investigative powers available to the Attorney General under Article 1 of Chapter 75 of the General Statutes. The Attorney General shall refer all cases of financial identity fraud under G.S. 14-113.20 to the district attorney in the county where the crime was deemed committed in accordance with G.S. 14-113.21."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 10:25 p.m. on the 10th day of August, 1999.

H.B. 1246

SESSION LAW 1999-450

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE SPECIAL REGISTRATION PLATES TO ANIMAL LOVERS TO PROMOTE SPAYING AND NEUTERING OF DOGS AND CATS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision in the correct alphabetical order to read:

"(b) Types. -- The Division shall issue the following types of special registration plates:

(3a) Animal Lovers. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a picture of a dog and cat and the phrase 'I Care.'"

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

<u>Special Plate</u>	<u>Additional Fee Amount</u>
Historical Attraction	\$30.00
State Attraction	\$30.00
Collegiate Insignia	\$25.00
Olympic Games	\$25.00
Special Olympics	\$25.00
Animal Lovers	\$20.00
March of Dimes	\$20.00
Scenic Rivers	\$20.00
School Technology	\$20.00
Soil and Water Conservation	\$20.00
Wildlife Resources	\$20.00
Personalized	\$20.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	\$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the

additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

<u>Special Plate</u>	<u>SRPA</u>	<u>CCAPA</u>	<u>NHT</u>
			<u>F</u>
Animal Lovers	\$10	\$10	0
Historical Attraction	\$10	\$20	0
In-State Collegiate Insignia	\$10	\$15	0
Out-of-state Collegiate Insignia	\$10	0	\$15
Personalized	\$10	0	\$10
Special Olympics	\$10	\$15	0
Olympic Games	\$10	\$15	0
State Attraction	\$10	\$20	0
March of Dimes	\$10	\$10	0
Scenic Rivers	\$10	\$10	0
School Technology	\$10	\$10	0
Soil and Water Conservation	\$10	\$10	0
Wildlife Resources	\$10	\$10	0
All other Special Plates	\$10	0	0."

Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b10) Animal Lovers Plates. -- The Division must receive 300 or more applications before an animal lovers plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the animal lovers plate to the Department of Health and Human Services to create a statewide program to promote spaying and neutering of dogs and cats."

Section 5. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 10:20 p.m. on the 10th day of August, 1999.

H.B. 160

SESSION LAW 1999-451

AN ACT TO INCREASE THE CRIMINAL PENALTY FOR CHILD ABUSE THAT RESULTS IN SERIOUS BODILY INJURY OR PERMANENT LOSS OR IMPAIRMENT OF ANY MENTAL OR EMOTIONAL FUNCTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-318.4 reads as rewritten:

"§ 14-318.4. *Child abuse a felony.*

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any

serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class E ~~felony~~, felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the juvenile is guilty of child abuse and shall be punished as a Class E felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon a juvenile is guilty of a Class E felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class C felony. 'Serious bodily injury' is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies."

Section 2. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

Became law upon approval of the Governor at 10:36 p.m. on the 10th day of August, 1999.

H.B. 280

SESSION LAW 1999-452

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER CHANGES TO THE MOTOR VEHICLE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(4b) Crash. -- Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous."

Section 2. G.S. 20-4.01(12a) reads as rewritten:

"(12a) Gross Vehicle Weight Rating (GVWR). -- The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle

is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered from the manufacturer's original design, the license weight or the total weight of the vehicle or combination of vehicles may be deemed as the GVWR for the purpose of enforcing this Chapter."

Section 3. G.S. 20-4.01(27)e. reads as rewritten:

"e. U-drive-it passenger vehicles. -- ~~Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.~~ Passenger vehicles included in the definition of U-drive-it vehicles set forth in this section."

Section 4. G.S. 20-4.01(33b) reads as rewritten:

"(33b) Reportable ~~Accident~~. Crash. -- ~~An accident or collision~~ A crash involving a motor vehicle that results in either one or more of the following:

- a. Death or injury of a human being.
- b. Total property damage of one thousand dollars (\$1,000) or more, or property damage of any amount to a vehicle seized pursuant to G.S. 20-28.3."

Section 5. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(48.1) U-drive-it vehicles. -- The following vehicles that are rented to a person, to be operated by that person:

- a. A private passenger vehicle other than the following:
 1. A private passenger vehicle of nine-passenger capacity or less that is rented for a term of one year or more.
 2. A private passenger vehicle that is rented to public school authorities for driver-training instruction.
- b. A property-hauling vehicle under 7,000 pounds that does not haul products for hire and that is rented for a term of less than one year.
- c. Motorcycles."

Section 6. G.S. 20-4.18 reads as rewritten:

"§ 20-4.18. *Definitions*.

Unless the context otherwise requires, the following words and phrases, for the purpose of this Article, shall have the following meanings:

- (1) Citation. -- Any citation, summons, ticket, or other document issued by a law-enforcement officer for the violation of a traffic law, ordinance, rule or regulation.

- (2) Collateral or Bond. -- Any cash or other security deposited to secure an appearance following a citation by a law-enforcement officer.
- (3) Repealed by Session Laws 1979, c. 667, s. 2, effective January 1, 1981.
- (4) Nonresident. -- A person who holds a license issued by a reciprocating state.
- (5) Personal Recognizance. -- ~~A signed~~ An agreement by a nonresident ~~that he will to~~ to comply with the terms of the citation issued to ~~him,~~ the non-resident.
- (6) Reciprocating State. -- Any state or other jurisdiction which extends by its laws to residents of North Carolina substantially the rights and privileges provided by this Article.
- (7) State. -- The State of North Carolina."

Section 7. G.S. 20-4.19(b) reads as rewritten:

"(b) ~~No A nonresident shall be entitled to be released on his personal recognizance may be required to post collateral or bond to secure appearance for trial if the offense is one which would result in the suspension or revocation of a person's license under the laws of this State."~~

Section 8. G.S. 20-9(g)(1) reads as rewritten:

"(1) The Division may issue a license to any person who is afflicted with or suffering from a physical or mental disability set out in subsection (e) of this section who is otherwise qualified to obtain a license, provided such person submits to the Division a certificate in the form prescribed in subdivision (2). Until a license issued under this subdivision expires or is revoked, the license continues in force as long as the licensee presents to the Division ~~one year from the date of issuance of such license and at yearly intervals thereafter a certificate in the form prescribed in subdivision (2), provided the Commissioner may require the submission of such certificate at six-month intervals where in his opinion public safety demands, a certificate in the form prescribed in subdivision (2) of this subsection at the intervals determined by the Division to be in the best interests of public safety.~~

Section 9. G.S. 20-11(k) reads as rewritten:

"(k) Supervising Driver. -- A supervising driver ~~must~~ shall be a parent or guardian of the permit holder or license holder or a responsible person approved by the parent or guardian or the Division. A supervising driver ~~must shall~~ shall be a licensed driver who has been licensed for at least five years. ~~A At least one supervising driver must shall sign the application for a permit or license. Each permit or license issued pursuant to this section shall be limited to a maximum of two supervising drivers.~~

Section 10. G.S. 20-16(d) reads as rewritten:

"(d) Upon suspending the license of any person as authorized in this section, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, not to exceed 60 days after receipt of the request, unless a preliminary hearing was held before his license was ~~suspended, as early as practical within not to exceed 30 days after receipt of such request.~~ ~~The hearing shall be conducted in the district court district as defined in G.S. 7A-133 wherein the licensee resides. Hearings shall be rotated among all the counties within that district if the district contains more than one county unless the Division and the licensee agree that such hearing may be held in some other district, and such notice shall contain the provisions of this section printed thereon.~~ Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor, may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. These agents shall also have the authority to take possession of a surrendered license on behalf of the Division if the suspension is upheld and the licensee requests that the suspension begin immediately."

Section 11. G.S. 20-19(d) reads as rewritten:

"(d) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

- (1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense

involving the possession or consumption of alcohol or drugs;
and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

Section 12. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration."

Section 13. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. -- Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a Class 2 misdemeanor. Any operator of a motor vehicle who shall otherwise intentionally cover any number or registration renewal sticker on a registration plate with any material that makes the number or registration renewal sticker illegible commits an infraction and shall be fined under G.S. 14-3.1."

Section 14. G.S. 20-63 is amended by adding a new subsection that reads:

"(i) Electronic Applications and Collections. -- The Division is authorized to accept electronic applications for the issuance of

registration plates, registration certificates, and certificates of title, and to electronically collect fees and penalties."

Section 15. G.S. 20-78(b) reads as rewritten:

"(b) The Division shall maintain a record of certificates of title issued, ~~maintaining at all times the records of the last two owners,~~ issued by the Division for a period of 20 years. After 20 years, the Division shall maintain a record of the last two owners.

The Commissioner is hereby authorized and empowered to provide for the photographic or photostatic recording of certificate of title records in such manner as he may deem expedient. The photographic or photostatic copies herein authorized shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein, and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted."

Section 16. G.S. 20-79.4(b)(27) reads as rewritten:

"(27) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. ~~The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."~~

Section 17. G.S. 20-87(2) reads as rewritten:

"(2) U-Drive-It ~~Passenger Vehicles.~~ -- U-drive-it ~~passenger~~ vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	\$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00

~~Automobiles: Forty one dollars (\$41.00) per year for each vehicle of fifteen-passenger capacity or less, and vehicles of over fifteen-passenger capacity shall be classified as buses and shall pay one dollar and forty cents (\$1.40) per hundred pounds empty weight of each vehicle.~~

Automobiles:	15 or fewer passengers	\$41.00
Buses:	16 or more passengers	\$ 1.40 per hundred pounds of empty weight

Trucks under
7,000 pounds
that do not
haul products
for hire:

4,000 pounds	\$41.50
5,000 pounds	\$51.00
6,000 pounds	\$61.00."

Section 18. G.S. 20-96 reads as rewritten:

"§ 20-96. ~~Collection of delinquent penalties and taxes. Detaining property-hauling vehicles until penalties and taxes are collected.~~

~~A law enforcement officer who discovers that a vehicle used for the transportation of property is being operated on the highways and that the owner of the vehicle is more than 30 days overdue in paying any of the following may detain the vehicle:~~

- ~~(1) A penalty previously assessed under this Chapter against the owner for a violation attributable to the failure of a vehicle to comply with this Chapter.~~
- ~~(2) A tax or penalty previously assessed against the owner under Article 36B of Chapter 105 of the General Statutes.~~

~~The officer may detain the vehicle until the delinquent penalties and taxes are paid.~~

(a) Authority to Detain Vehicles. -- A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

- (1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.
- (2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.
- (3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.
- (4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

The officer may detain the vehicle until the delinquent penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. -- When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State is shall not be liable for damage to the vehicle or loss of the property being hauled."

Section 19. G.S. 20-166.1(h) reads as rewritten:

"(h) Forms. -- The Division ~~must~~ shall provide forms or procedures for submitting crash data to persons required to make reports under this section and the reports ~~must~~ shall be made on the forms provided, in a format approved by the Commissioner. The forms ~~must ask for the~~ The following information shall be included about a reportable ~~accident; crash~~:

- (1) The cause of the ~~accident, crash~~.
- (2) The conditions existing at the time of the ~~accident, crash~~.
- (3) The persons and vehicles involved.
- (4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 20. G.S. 20-309(e) reads as rewritten:

"(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the insurer shall notify the Division of ~~such termination~~; the termination within 20

business days; provided, no cancellation notice is required if the same insurer issues a new replacement insurance policy complying with this Article at the same time the insurer cancels or otherwise terminates the old policy, no lapse in coverage results, and the insurer sends the certificate of insurance form for the new policy to the Division. The insurer shall notify the Division of any new policy for insurance within 20 working days of its issuance unless the new coverage is a replacement insurance policy for a policy terminated by the same insurer. Any insurance company with twenty-five million dollars (\$25,000,000) or more in annual vehicle insurance premium volume must submit the notices required under this section by electronic means. All other insurance companies may submit the notices required under this section by either paper or electronic means. The names of insureds and the beginning date and termination date of insurance coverage provided to the Division by the insurer pursuant to this paragraph shall constitute a designated trade secret under G.S. 132-1.2.

The Division, upon receiving notice of cancellation or termination of an owner's financial responsibility as required by this Article, a lapse in insurance coverage, shall notify such the owner of such cancellation or termination, the lapse in coverage, and such the owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:

- (1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or
- (2) In the case of a lapse in financial responsibility, pay a fifty dollar (\$50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle accident crash during the period of no financial responsibility.

Failure of the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and unless the owner's registration plate has on or prior to the date of termination of insurance been surrendered to the Division by surrender to an agent or representative of the Division designated by the Commissioner, or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division shall revoke the vehicle's registration for 30 days.

In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, spouse, or any child of the spouse, or any child of such owner within less than 30 days after the date of receipt of the registration plate by the Division of Motor Vehicles,

except that a spouse living separate and apart from the registered owner may register such vehicle immediately in such spouse's name. Additionally, as a condition precedent to the reregistration of the vehicle by the registered owner, spouse, or any child of the spouse, or any child of such owner, except a spouse living separate and apart from the registered owner, the payment of a restoration fee of fifty dollars (\$50.00) and the appropriate fee for a new registration plate is required. Any person, firm or corporation failing to give notice of termination shall be subject to a civil penalty of two hundred dollars (\$200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division."

Section 21. G.S. 20-376 reads as rewritten:

"§ 20-376. *Definitions.*

The following definitions apply in this Article:

- (1) Federal safety and hazardous materials regulations. -- The federal motor carrier safety regulations contained in 49 C.F.R. Parts ~~170 through 190~~, 171 through 180, 382, and 390 through 398.
- (2) Foreign commerce. -- Commerce between any of the following:
 - a. A place in the United States and a place in a foreign country.
 - b. Places in the United States through any foreign country.
- (3) Interstate commerce. -- As defined in 49 C.F.R. Part 390.5. Commerce between any of the following:
 - ~~a. A place in a state and a place in another state.~~
 - ~~b. Places in the same state through another state.~~
- (4) Intrastate commerce. -- As defined in 49 C.F.R. Part 390.5. Commerce that is between points and over a route wholly within this State and is not part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce."

Section 22. G.S. 20-381(b) reads as rewritten:

"(b) The definitions set out in 49 Code of Federal Regulations § 171.8 apply to this subsection. ~~Citations to the Code of Federal Regulations (CFR) in this subsection refer to the 1 October 1997 Edition of the CFR.~~ The transportation of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Parts 171 through 180 of 49 CFR as provided in 49 CFR § 173.5(a). The transportation of an agricultural product to or from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Subparts G and H of Part 172 of 49 CFR as provided in 49 CFR § 173.5(b)."

Section 23. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle

while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

- a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.
- b. Meats or agricultural crop products transported from a farm to first market.
- c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.
- d. Livestock or poultry transported from their point of origin to first market.
- e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.
- f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms "recyclable" "recyclable material" and "processing" have the same meaning as in G.S. 130A-290(a).
- g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.
- h. Treated sludge collected from a wastewater treatment facility.
- i. Apples when transported from the orchard to the first processing or packing point.
- j. Trees grown as Christmas trees from the field, farm, stand, or grove to first processing point."

Section 24. The Division of Motor Vehicles shall develop a plan to improve the system of collecting and maintaining proof of financial responsibility for newly licensed drivers classified as inexperienced operators. The Division shall submit its report to the Joint Legislative Transportation Oversight Committee by December 1, 1999.

Section 25. G.S. 20-183.8(b) reads as rewritten:

"(b) Defenses to Infractions. -- Any of the following is a defense to a violation under subsection (a) of this section:

- (1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a

current inspection sticker was obtained within 10 days after the vehicle came back to the State.

- (2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.
- (3) Repealed by Session Laws 1997-29, s. 5.
- (4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a ~~safety-only inspection~~, safety inspection or an emissions inspection and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued."

Section 26. G.S. 105-550(7) reads as rewritten:

"(7) U-drive-it ~~passenger~~ vehicle. -- Defined in G.S. 20-4.01."

Section 27. G.S. 105-551(a) reads as rewritten:

"(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting U-drive-it ~~passenger~~ vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes."

Section 28. G.S. 105-552(b) reads as rewritten:

"(b) Collection. -- A tax levied by an Authority under this Article shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Article is to be added to the lease or rental price of a U-drive-it ~~passenger~~ vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Article applies regardless of whether the retailer who leases or rents the U-drive-it ~~passenger~~ vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under this Article must be paid to the Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the U-drive-it ~~passenger~~ vehicle or motorcycle had elected to pay the optional gross receipts tax."

Section 28.1. G.S. 105-259(b)(7) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any

other person unless the disclosure is made for one of the following purposes:

- (7) To exchange information with the Division of Motor Vehicles of the Department of Transportation or the International Fuel Tax Association, Inc., when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles."

Section 29. Sections 6, 7, 9, and 29 of this act are effective when they become law. Section 20 of this act becomes effective October 1, 2000. The remainder of this act becomes effective October 1, 1999.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 10:53 p.m. on the 10th day of August, 1999.

S.B. 881

SESSION LAW 1999-453

AN ACT TO ESTABLISH THE CAMPAIGN REFORM ACT OF 1999.

The General Assembly of North Carolina enacts:

Section 1. This act shall be called "The Campaign Reform Act of 1999."

-- STAND BY YOUR AD.

Section 2.(a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new Part to read:

"Part 1A. Disclosure Requirements for Media Advertisements.

"§ 163-278.39. Basic disclosure requirements for all political campaign advertisements.

(a) Basic Requirements. -- It shall be unlawful for any sponsor to sponsor an advertisement in the print media or on radio or television that constitutes an expenditure or contribution required to be disclosed under this Article unless all the following conditions are met:

- (1) It bears the legend or includes the statement: 'Paid for by [Name of candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor].' In television advertisements, this disclosure shall be made by visual legend.
- (2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).
- (3) The sponsor states in the advertisement its position for or against the candidate, provided that this subdivision applies only if the advertisement supports or opposes the nomination or election of one or more clearly identified candidates.

- (4) The sponsor states in the advertisement its position for or against a ballot measure, provided that this subdivision applies only if the advertisement is made for or against a ballot measure.
- (5) In a print media advertisement supporting or opposing the nomination or election of one or more clearly identified candidates, the sponsor states whether it is authorized by a candidate. The visual legend in the advertisement shall state either 'Authorized by [name of candidate], candidate for [name of office]' or 'Not authorized by a candidate.' This subdivision does not apply if the sponsor of the advertisement is the candidate the advertisement supports or that candidate's campaign committee.
- (6) In a print media advertisement that identifies a candidate the sponsor is opposing, the sponsor discloses in the advertisement the name of the candidate who is intended to benefit from the advertisement. This subdivision applies only when the sponsor coordinates or consults about the advertisement or the expenditure for it with the candidate who is intended to benefit.

If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors.

(b) Size Requirements. -- In a print media advertisement covered by subsection (a) of this section, the height of all disclosure statements required by that subsection shall constitute at least five percent (5%) of the height of the printed space of the advertisement, provided that the type shall in no event be less than 12 points in size. If a single advertisement consists of multiple pages, folds, or faces, the disclosure requirement of this section applies only to one page, fold, or face. In a television advertisement covered by subsection (a) of this section, the visual disclosure legend shall constitute 32 scan lines in size. In a radio advertisement covered by subsection (a) of this section, the disclosure statement shall last at least three seconds.

(c) Misrepresentation of Authorization. -- Notwithstanding G.S. 163-278.27(a), any candidate, candidate campaign committee, political party organization, political action committee, referendum committee, individual, or other sponsor making an advertisement in the print media or on radio or television bearing any legend required by subsection (a) of this section that misrepresents the sponsorship or authorization of the advertisement is guilty of a Class 1 misdemeanor.
"§ 163-278.39A. Disclosure requirements for television and radio advertisements supporting or opposing the nomination or election of one or more clearly identified candidates.

(a) Expanded Disclosure Requirements. -- In addition to the basic disclosure requirements in G.S. 163-278.39, any political campaign advertisement on radio or television shall comply with the expanded disclosure requirements set forth in this section.

(b) Disclosure Requirements for Television. --

- (1) Candidate advertisements on television. -- Television advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: 'I am (or "This is..." [name of candidate], candidate for [name of office], and I (or "my campaign..." sponsored this ad.' This subdivision applies only to an advertisement that mentions the name of, shows the picture of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.
- (2) Political party advertisements on television. -- Television advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: 'The [name of political party organization] sponsored this ad opposing/supporting [name of candidate] for [name of office].' The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.
- (3) Political action committee advertisements on television. -- Television advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: 'The [name of political action committee] political action committee sponsored this ad opposing/supporting [name of candidate] for [name of office].' The name of the political action committee used in the advertisement shall be the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1).
- (4) Advertisements on television by an individual. -- Television advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: 'I am [individual's name], and I sponsored this advertisement opposing/supporting [name of candidate] for [name of office].'
- (5) Advertisements on television by another sponsor. -- Television advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or

election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: '[Name of sponsor] sponsored this ad.'

- (6) All advertisements on television. -- In any television advertisement described in subdivisions (1) through (4) of this subsection, an unobscured, full-screen picture containing the disclosing individual, either in photographic form or through the actual appearance of the disclosing individual on camera, shall be featured throughout the duration of the disclosure statement.

(c) Disclosure Requirements for Radio. --

- (1) Candidate advertisements on radio. -- Radio advertisements purchased by a candidate or by a candidate campaign committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the candidate and containing at least the following words: 'I am (or "This is...") [name of candidate], candidate for [name of office], and this ad was paid for (or "sponsored" or "furnished") by [name of candidate campaign committee that paid for the advertisement].' This subdivision applies only to an advertisement that mentions the name of, transmits the voice of, or otherwise refers to an opposing candidate for the same office as the sponsoring candidate.

- (2) Political party advertisements on radio. -- Radio advertisements purchased by a political party organization supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chair, executive director, or treasurer of the political party organization and containing at least the following words: 'This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political party].' The disclosed name of the political party organization shall include the name of the political party as it appears on the ballot.

- (3) Political action committee advertisements on radio. -- Radio advertisements purchased by a political action committee supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive officer or treasurer of the political action committee and containing at least the following words: 'This ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by [name of political action committee] political action committee.' The name of the political action committee used in the advertisement shall be the name that

appears on the statement of organization as required by G.S. 163-278.7(b)(1).

- (4) Advertisements on radio by an individual. -- Radio advertisements purchased by an individual supporting or opposing the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the individual and containing at least the following words: 'I am [individual's name], and this ad opposing/supporting [name of candidate] for [name of office] was paid for (or "sponsored" or "furnished") by me.'
- (5) Advertisements on radio by another sponsor. -- Radio advertisements purchased by a sponsor other than a candidate, a candidate campaign committee, a political party organization, a political action committee, or an individual which supports or opposes the nomination or election of one or more clearly identified candidates shall include a disclosure statement spoken by the chief executive or principal decision maker of the sponsor and containing at least the following words: '[Name of sponsor] paid for (or "sponsored" or "furnished") this ad.'

(d) Placement of Disclosure Statement in Television and Radio Advertisements. -- In advertisements on television, a sponsor may place the disclosure statement required by this section at any point during the advertisement, except if the duration of the advertisement is more than five minutes, the disclosure statement shall be made both at the beginning and end of the advertisement. The sponsor may provide the oral disclosure statement required by this section at the same time as the visual disclosure required under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, is shown. But any visual disclosure legend shall be at least 32 scan lines in size. For advertisements on radio, the placement of the oral disclosure statement shall comply with the requirements of the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(e) Choice of Supporting or Opposing a Candidate. -- In its oral disclosure statement, a sponsoring political party organization, political action committee, individual, or other noncandidate sponsor shall choose either to identify an advertisement as supporting or opposing the nomination or election of one or more clearly identified candidates.

(e1) Joint Sponsors. -- If an advertisement described in this section is jointly sponsored, the disclosure statement shall name all the sponsors and the disclosing individual shall be one of those sponsors. If a candidate is one of the sponsors, that candidate shall be the disclosing individual, and if more than one candidate is the sponsor, at least one of the candidates shall be the disclosing individual.

(f) Legal Remedy. -- Pursuant to the conditions established in subdivisions (1), (2), and (3) of this subsection, a candidate for an elective office who complied with the television and radio disclosure requirements throughout that candidate's entire campaign shall have a

monetary remedy in a civil action against (i) an opposing candidate or candidate committee whose television or radio advertisement violates these disclosure requirements and (ii) against any political party organization, political action committee, individual, or other sponsor whose advertisement for that elective office violates these disclosure requirements:

- (1) Any plaintiff candidate in a statewide race in an action under this section shall complete and file a Notice of Complaint Regarding Failure to Disclose on Television or Radio Campaign Advertising with the State Board of Elections after the airing of the advertisement but no later than the first Friday after the Tuesday on which the election occurred. Candidates in nonstatewide races may file the notice during the same time period with one county board of elections within the electoral area in which they are candidates. The timely filing of this notice preserves the candidate's right to bring an action in superior court any time within 90 days after the election. A candidate shall bring the civil action in the county where the candidate filed the notice.
- (2) Upon receiving a favorable verdict in accordance with existing law, the plaintiff candidate shall receive a monetary award of actual damages. The price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired and that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements of this section.

The plaintiff candidate shall also receive an award that trebles the amount of actual damages if:

- a. The plaintiff candidate can establish having notified or attempted to notify the sponsor of the advertisement properly by return-receipt mail about the failure of a particular advertisement or advertisements to comply with the disclosure requirements of this section, and
- b. After the notice or attempted notice, the advertisement continued to be aired.

The treble damages shall be calculated from the date on which the return-receipt notice was accepted or rejected by a defendant sponsoring candidate or candidate committee, political party organization, political action committee, or individual. The plaintiff candidate or candidate committee shall send a copy of any return-receipt mailing to the relevant board of elections as provided in subdivision (1) of this subsection within five days after the notice is returned to the possession of the candidate or candidate committee.

The plaintiff candidate may bring the civil action personally or authorize his or her candidate campaign committee to bring the civil action.

- (3) A candidate who violates the disclosure requirements of State law in this section and that candidate's campaign committee

shall be jointly and severally liable for the payment of damages and attorneys' fees. If the candidate is held personally liable for any payment of damages or attorneys' fees, the candidate shall not use or be reimbursed by funds from the candidate's campaign committee in paying any amount.

(g) Relation to the Communications Act of 1934. -- Television advertisements by a sponsor supporting or opposing the nomination or election of one or more clearly identified candidates shall comply with the oral disclosure requirements under State law in this section. Those advertisements shall also comply with disclosure requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317 by use of visual legends. The content of those visual legends is specified by the Communications Act of 1934, 47 U.S.C. §§ 315 and 317, and G.S. 163-278.39(a)(1). The size of those visual legends is determined by G.S. 163-278.39(b), which satisfies requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317. In the case of radio advertisements, the oral disclosure requirements under State law in this section incorporate the content requirements under the Communications Act of 1934, 47 U.S.C. §§ 315 and 317.

(h) No Additional Liability of Television or Radio Outlets. -- Television or radio outlets shall not be liable under this section for carriage of political advertisements that fail to include the disclosure requirements provided for in this section.

(i) No Criminal Liability. -- Nothing in this section regarding the disclosure requirements in subsections (b) and (c) of this section shall be relied upon or otherwise interpreted to create criminal liability for any person.

"§ 163-278.39B. Definitions.

As used in this Part:

- (1) 'Advertisement' means any message appearing in the print media, on television, or on radio that constitutes a contribution or expenditure under this Article.
- (2) 'Candidate' means any individual who, with respect to a public office listed in G.S. 163-278.6(18), has filed a notice of candidacy or a petition requesting to be a candidate, or has been certified as a nominee of a political party for a vacancy, or has otherwise qualified as a candidate in a manner authorized by law, or has filed a statement of organization under G.S. 163-278.7 and is required to file periodic financial disclosure statements under G.S. 163-278.9.
- (3) 'Candidate campaign committee' means any political committee organized by or under the direction of a candidate.
- (4) 'Full-screen' means the only picture appearing on the television screen during the oral disclosure statement contains the disclosing person, that the picture occupies all visible space on the television screen, and that the image of

the disclosing person occupies at least fifty percent (50%) of the vertical height of the television screen.

- (5) 'Print media' means billboards, cards, newspapers, newspaper inserts, magazines, mass mailings, pamphlets, fliers, periodicals, and outdoor advertising facilities. A 'mass mailing' is a mailing with more than 500 pieces.
- (6) 'Political action committee' has the same meaning as 'political committee' in G.S. 163-278.6(14), except that 'political action committee' does not include any political party or political party organization.
- (7) 'Political party organization' means any political party executive committee or any political committee that operates under the direction of a political party executive committee or political party chair.
- (8) 'Radio' means any radio broadcast station that is subject to the provisions of 47 U.S.C. §§ 315 and 317.
- (9) 'Scan line' means a standard term of measurement used in the electronic media industry calculating a certain area in a television advertisement.
- (10) 'Sponsor' means a candidate, candidate committee, political party organization, political action committee, referendum committee, individual, or other entity that purchases an advertisement.
- (11) 'Television' means any television broadcast station, cable television system, wireless-cable multipoint distribution system, satellite company, or telephone company transmitting video programming that is subject to the provisions of 47 U.S.C. §§ 315 and 317.
- (12) 'Unobscured' means the only printed material that may appear on the television screen is a visual disclosure statement required by law, and nothing is blocking the view of the disclosing person's face.

"§ 163-278.39C. Scope of disclosure requirements.

The disclosure requirements of this Part apply to any sponsor of an advertisement in the print media or on radio or television the cost or value of which constitutes an expenditure or contribution required to be disclosed under this Article, except that the disclosure requirements of this Part:

- (1) Do not apply to an individual who makes uncoordinated independent expenditures aggregating less than one thousand dollars (\$1,000) in a political campaign; and
- (2) Do not apply to an individual who incurs expenses with respect to a referendum.

The disclosure requirements of this Part do not apply to any advertisement the expenditure for which is required to be disclosed by G.S. 163-278.12A alone and by no other law."

Section 2.(b) G.S. 163-278.16, as amended by Section 4(b) of Session Law 1999-31, reads as rewritten:

~~"§ 163-278.16. Regulations regarding contributions, expenditures and media advertising, timing of contributions and expenditures.~~

(a) Except as provided in G.S. 163-278.12, no contribution may be received or expenditure made by or on behalf of a candidate, political committee, or referendum committee:

- (1) Until the candidate, political committee, or referendum committee appoints a treasurer and certifies the name and address of the treasurer to the Board; and
- (2) Unless the contribution is received or the expenditure made by or through the treasurer of the candidate, political committee, or referendum committee.

(b) to (e) Repealed by Session Laws 1975, c. 565, s. 2.

~~(f) No media advertisement of any kind may be made by a treasurer, candidate, political committee, referendum committee or individual unless~~

- ~~(1) It bears the legend or includes the statement: "Paid for by (or Sponsored by)..... (Name of candidate, political committee, referendum committee, individual)";~~
- ~~(2) The name used in the labeling required in subdivision (1) of this subsection is the name that appears on the statement of organization as required in G.S. 163-278.7(b)(1), provided that this subdivision applies only if the sponsor is a political committee or referendum committee;~~
- ~~(3) The sponsor states in the media advertisement its position:

 - a. For or against the candidate; or
 - b. For or against an opposing candidate
 provided that this subdivision applies only if the media advertisement is made for or against a candidate; and~~
- ~~(4) The sponsor states in the media advertisement its position for or against the ballot measure; provided this subdivision applies only if the media advertisement is made for or against a ballot measure.~~

The requirements of subdivisions (3) and (4) of this subsection do not apply to any print advertisement less than two inches by two inches in size, or to any radio or television advertisement of less than 20 seconds in length.

The media shall not publish or broadcast any political advertisement unless it bears the legend or includes the statement required herein. For purposes of this subsection, "media" means broadcasting stations, carrier current stations, newspapers, magazines, periodicals, outdoor advertising facilities, billboards, and newspaper inserts.

~~(g) All printed matter from a political party or political committee which opposes the nomination or election of a clearly identified candidate shall indicate in type smaller than 12 point the name of the political party or political committee and the name of the candidate that is intended to benefit from the printed matter."~~

Section 2.(c) G.S. 163-278.27(a) reads as rewritten:

"(a) Any individual, candidate, political committee, referendum committee, treasurer, person or media who violates the applicable

provisions of G.S. 163-278.7, 163-278.8, 163-278.9, 163-278.10, 163-278.11, 163-278.12, 163-278.14, 163-278.16, 163-278.17, 163-278.18, 163-278.39, 163-278.40A, 163-278.40B, 163-278.40C, 163-278.40D or 163-278.40E is guilty of a Class 2 misdemeanor."

Section 2.(d) This section becomes effective January 1, 2000, and applies to all contributions and expenditures made or accepted on or after that date.

-- EVIDENCE THAT COMMUNICATIONS ARE "TO SUPPORT OR OPPOSE ONE OR MORE CLEARLY IDENTIFIABLE CANDIDATES."

Section 3.(a) Article 22A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-278.14A. Evidence that communications are 'to support or oppose the nomination or election of one or more clearly identified candidates.'

(a) Either of the following shall be means, but not necessarily the exclusive or conclusive means, of proving that an individual or other entity acted 'to support or oppose the nomination or election of one or more clearly identified candidates':

- (1) Evidence of financial sponsorship of communications to the general public that use phrases such as 'vote for', 'reelect', 'support', 'cast your ballot for', '(name of candidate) for (name of office)', '(name of candidate) in (year)', 'vote against', 'defeat', 'reject', 'vote pro-(policy position)' or 'vote anti-(policy position)' accompanied by a list of candidates clearly labeled 'pro-(policy position)' or 'anti-(policy position)', or communications of campaign words or slogans, such as posters, bumper stickers, advertisements, etc., which say '(name of candidate)'s the One', '(name of candidate) '98', '(name of candidate)!', or the names of two candidates joined by a hyphen or slash.
- (2) Evidence of financial sponsorship of communications whose essential nature expresses electoral advocacy to the general public and goes beyond a mere discussion of public issues in that they direct voters to take some action to nominate, elect, or defeat a candidate in an election. If the course of action is unclear, contextual factors such as the language of the communication as a whole, the timing of the communication in relation to events of the day, the distribution of the communication to a significant number of registered voters for that candidate's election, and the cost of the communication may be considered in determining whether the action urged could only be interpreted by a reasonable person as advocating the nomination, election, or defeat of that candidate in that election.

(b) Notwithstanding the provisions of subsection (a) of this section, a communication shall not be subject to regulation as a contribution or expenditure under this Article if it:

- (1) Appears in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, or magazine, unless those facilities are owned or controlled by any political party, or political committee;
- (2) Is distributed by a corporation solely to its stockholders and employees; or
- (3) Is distributed by any organization, association, or labor union solely to its members or to subscribers or recipients of its regular publications, or is made available to individuals in response to their request, including through the Internet."

Section 3.(b) This section is effective when this act becomes law.

-- PRESUMPTIONS.

Section 3.1.(a) G.S. 163-278.34A, as enacted by Session Law 1999-31, reads as rewritten:

"§ 163-278.34A. *Presumptions.*

In any proceeding brought pursuant to this Article in which a presumption arises from the proof of certain facts, the defendant ~~has the burden of offering~~ may offer some evidence to rebut the ~~presumption.~~ The presumption, but the State bears the ultimate burden of proving the essential elements of its case."

Section 3.1.(b) This section is effective when this act becomes law.

-- CORRECTING LOOPHOLE CONCERNING 'GIVING IN THE NAME OF ANOTHER.'

Section 4.(a) G.S. 163-278.14(a) reads as rewritten:

"(a) No individual, political committee, or other entity shall make any contribution anonymously, except as provided in G.S. 163-278.8(d), or in the name of another. No candidate, political committee, referendum committee, political party, or treasurer shall knowingly accept any contribution made by any individual or person in the name of another individual or person or made anonymously except as provided in G.S. 163-278.8(d). If a candidate, political committee, referendum committee, political party, or treasurer receives ~~any such contributions,~~ anonymous contributions or contributions determined to have been made in the name of another, he shall pay the money over to the Board, by check, and all such moneys received by the Board shall be deposited in the general fund of the State of North Carolina."

Section 4.(b) This section becomes effective December 1, 1999, and applies to offenses committed on and after that date.

-- GRANTING THE STATE BOARD OF ELECTIONS MORE FLEXIBILITY UNDER THE ADMINISTRATIVE PROCEDURE ACT.

Section 5.(a) G.S. 150B-21.1. is amended by adding a new subsection:

"(a4) Notwithstanding the provisions of subsection (a) of this section, the State Board of Elections may adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:

- (1) In accordance with the provisions of G.S. 163-22.2.
- (2) To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
- (3) The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.

When the State Board of Elections adopts a temporary rule pursuant to this subsection, it must submit the reference to this subsection as its statement of need to the Codifier of Rules."

Section 5.(b)G.S. 163-278.23 reads as rewritten:

"§ 163-278.23. *Duties of Executive Secretary-Director of Board.*

The Executive Secretary-Director of the Board shall inspect or cause to be inspected each statement filed with the Board under this Article within 30 days after the date it is filed. The Executive Secretary-Director shall advise, or cause to be advised, no more than 30 days and at least five days before each report is due, each candidate or treasurer whose organizational report has been filed, of the specific date each report is due. He shall immediately notify any individual, candidate, treasurer, political committee, referendum committee, or media required to file a statement under this Article if:

- (1) It appears that the individual, candidate, treasurer, political committee, referendum committee or media has failed to file a statement as required by law or that a statement filed does not conform to this Article; or
- (2) A written complaint is filed under oath with the Board by any registered voter of this State alleging that a statement filed with the Board does not conform to this Article or to the truth or that an individual, candidate, treasurer, political committee, referendum committee or media has failed to file a statement required by this Article.

The Executive Secretary-Director of the Board of Elections shall issue written rulings opinions to candidates and may issue written rulings opinions to the communications media, political committees, and referendum committees upon request, regarding filing procedures and compliance with this Article. Any such ruling opinion so issued shall specifically refer to this paragraph. If the candidate, communications media, political committees, or referendum committees rely on and comply with the ruling opinion of the Executive Secretary-Director of the Board of Elections, then prosecution or civil action on account of the procedure followed pursuant thereto and prosecution for failure to comply with the statute inconsistent with the written ruling of the Executive Secretary-Director of the Board of Elections issued to the candidate or committee involved shall be barred. Nothing in this paragraph shall be construed to prohibit or delay the regular and timely filing of reports. The Executive Secretary-Director shall file all opinions issued pursuant to this section with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code."

Section 5.(c) G.S. 163-278.21 reads as rewritten:

"§ 163-278.21. *Promulgation of policy and administration through State Board of Elections.*

The State Board of Elections shall have responsibility, adequate staff, equipment and facilities, for promulgating all ~~necessary regulations, and~~ regulations necessary for the enforcement and administration of this Article. ~~Article and to prevent the circumvention of the provisions of this Article.~~ The State Board of Elections shall empower the Executive Secretary-Director with the responsibility for the administrative operations required to administer this Article and may delegate or assign to him such other duties from time to time by regulations or orders of the State Board of Elections."

Section 5.(d) This section is effective when this act becomes law and applies to rules adopted by the State Board of Elections on or after that date.

-- PROHIBIT FUND-RAISING FROM LOBBYISTS AND RELATED POLITICAL COMMITTEES.

Section 6.(a) G.S. 163-278.13B(c) reads as rewritten:

"(c) Prohibited Contributions. -- While the General Assembly is in regular session:

- (1) No limited contributor shall make or offer to make a contribution to a limited contributee.
- (2) No limited contributor shall make a contribution to any candidate, officeholder, or political committee, directing or requesting that the contribution be made in turn to a limited contributee.
- (3) No limited contributor shall transfer any amount of money or anything of value to any entity, directing or requesting that the entity use what was transferred to contribute to a limited contributee.
- (4) No limited contributee shall accept a contribution from a limited contributor.
- (5) No limited contributor shall solicit a contribution from any individual or political committee on behalf of a limited contributee. This subdivision does not apply to a limited contributor soliciting a contribution on behalf of a political party executive committee if the solicitation is solely for a separate segregated fund kept by the political party limited to use for activities that are not candidate-specific, including generic voter registration and get-out-the-vote efforts, pollings, mailings, and other general activities and advertising that do not refer to a specific individual candidate."

Section 6.(b) This section becomes effective October 1, 1999, and applies to all contributions made, accepted, or solicited on or after that date.

-- REQUIRING MONTHLY REPORTS TO BOARDS OF ELECTIONS OF DEATHS AND FELONY CONVICTIONS.

Section 7.(a) G.S. 163-82.14(b) reads as rewritten:

"(b) Death. -- The Department of Health and Human Services, ~~on or before the fifteenth day of March, June, September, and December,~~ Services shall furnish free of charge to ~~each county board of elections a certified list of~~ the State Board of Elections every month, in a format prescribed by the State Board of Elections, the names of deceased persons who were residents of ~~that county,~~ the State. The State Board of Elections shall distribute every month to each county board of elections the names on that list of deceased persons who were residents of that county. The Department of Health and Human Services shall base each list upon information supplied by death certifications it received during the preceding ~~quarter,~~ month. Upon the receipt of ~~the certified list,~~ the those names, each county board of elections shall remove from its voter registration records any person the list shows to be dead. The county board need not send any notice to the address of the person so removed."

Section 7.(b) G.S. 163-82.14(c)(1) reads as rewritten:

"(1) Report of Conviction Within the State. -- The clerk of superior court, on or before the fifteenth day of ~~March, June, September, and December~~ of every ~~year,~~ month, shall report to the county board of elections of that county the name, county of residence, and residence address if available, of each individual against whom a final judgment of conviction of a felony has been entered in that county in the preceding calendar ~~quarter,~~ month. Any county board of elections receiving such a report about an individual who is a resident of another county in this State shall forward a copy of that report to the board of elections of that county as soon as possible."

Section 7.(c) This section becomes effective January 1, 2000.

-- EXPANDING THE "RACE" CATEGORY ON THE VOTER REGISTRATION FORM.

Section 8.(a) G.S. 163-82.4(a) reads as rewritten:

"(a) Information Requested of Applicant. -- The form required by G.S. 163-82.3(a) shall request the applicant's:

- (1) Name,
- (2) Date of birth,
- (3) Residence address,
- (4) County of residence,
- (5) Date of application,
- (6) Gender,
- (7) Race,
- (7a) Ethnicity,

(8) Political party affiliation, if any, in accordance with subsection (c) of this section,

(9) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether

currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters."

Section 8.(b) This section becomes effective January 1, 2002.

Section 9. Of the funds appropriated to the State Board of Elections for the 1999-2000 fiscal year, the State Board of Elections may use up to the sum of twenty-five thousand dollars (\$25,000) for the purpose of meeting its additional responsibilities under Sections 2, 3, 5, and 6 of this act.

Section 10. Prosecutions for, or sentences based on, offenses occurring before the relevant effective date in this act are not abated or affected by this act, and the statutes that would be applicable to those prosecutions or sentences but for the provisions of this act remain applicable to those prosecutions or sentences.

Section 11. The provisions of this act are severable. If any section, subsection, subdivision, sub-subdivision, phrase, or word of this act or of any statute that it amends is held invalid by a court of competent jurisdiction, the invalidity does not affect any other portion or portions of this act that can be given effect without the invalid provision.

Section 12. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 4:07 p.m. on the 12th day of August, 1999.

H.B. 222

SESSION LAW 1999-454

AN ACT TO STRENGTHEN THE LITTERING LAW BY INCREASING THE MINIMUM AND MAXIMUM FINES AND BY REQUIRING COMMUNITY SERVICE IF THE LITTER IS MORE THAN FIVE HUNDRED POUNDS, IS A HAZARDOUS WASTE, OR IS DISCARDED FOR COMMERCIAL PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399 reads as rewritten:

"§ 14-399. *Littering.*

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

- (1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or
- (2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(c) Any person who violates this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than ~~one hundred dollars (\$100.00)~~ two hundred fifty dollars (\$250.00) nor more than ~~five hundred dollars (\$500.00)~~ one thousand dollars (\$1,000) for the first offense. In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent offense within three years after the date of a prior offense is punishable by a fine of not less than ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00) nor more than ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than ~~one hundred dollars (\$100.00)~~ five hundred dollars (\$500.00) nor more than ~~one thousand dollars (\$1,000)~~ two thousand dollars (\$2,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than

100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other community service commensurate with the offense committed.

(e) Any person who violates this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court ~~may~~ shall order the violator to:

- (1) Remove, or render harmless, the litter that he discarded in violation of this section;
- (2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or
- (3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(f) A court may enjoin a violation of this section.

(f1) If a violation of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to ~~G.S. 58-30.4~~ G.S. 58-36-65 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars (\$200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

- (1) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.
- (2) ~~"Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.~~
- (2a) "Commercial purposes" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of such entity.

- (3) "Law enforcement officer" means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);
- (4) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. "Litter" does not include political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.
- (5) "Vehicle" has the same meaning as in G.S. 20-4.01(49); and
- (6) "Watercraft" means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

Section 2. The Commissioner of Motor Vehicles is directed to include at least one question relating to littering on the next drivers license examination prepared by the Division of Motor Vehicles.

Section 3. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law upon approval of the Governor at 10:20 p.m. on the 13th day of August, 1999.

S.B. 568

SESSION LAW 1999-455

AN ACT TO REMOVE THE EXCUSE REQUIREMENT FROM ONE-STOP ABSENTEE VOTING FOR THE GENERAL ELECTION HELD IN NOVEMBER OF EVEN-NUMBERED YEARS, TO ALLOW COUNTY BOARDS OF ELECTIONS TO DESIGNATE ADDITIONAL ONE-STOP SITES, AND TO MAKE CHANGES RELATED TO STREAMLINING THE ABSENTEE BALLOT PROCESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-226 reads as rewritten:

"§ 163-226. *Who may vote an absentee ballot.*

(a) Who May Vote Absentee Ballot; Generally. -- Any qualified voter of the State may vote by absentee ballot in a statewide primary, general, or special election on constitutional amendments, referenda or bond proposals, and any qualified voter of a county is authorized to vote by absentee ballot in any primary or election conducted by the county board of elections, in the manner provided in this Article if:

- (1) The voter expects to be absent from the county in which he is registered during the entire period that the polls are open on the day of the specified election in which the voter desires to vote;
- (2) The voter is unable to be present at the voting place to vote in person on the day of the specified election in which the voter desires to vote because of the voter's sickness or other physical ~~disability~~ disability;
- (3) The voter is incarcerated, whether in the voter's county of residence or elsewhere, shall be entitled to vote by absentee ballot in the county of the voter's residence in any election, specified herein, in which the voter otherwise would be entitled to vote. Absentee voting shall be in the same manner as provided in this Article. The chief custodian or superintendent of the institution or other place of confinement shall certify that the applicant is not a felon, and the certification shall be as prescribed by the State Board of Elections. The State Board of Elections is authorized to prescribe procedures to carry out the intent and purpose of this subsection;
- (3a) The voter because of the observance of a religious holiday pursuant to the tenets of the voter's religion will be unable to cast a ballot at the polling place on the day of the election; or
- (4) The voter is an employee of the county board of elections or a precinct official, observer, or ballot counter, in another precinct and the voter's assigned duties on the day of the election will cause the voter to be unable to be present at the voting place to vote in person and provided

such employee has the application witnessed by the chairman of the county board of elections.

(a1) No-Excuse Absentee Voting for One-Stop in General Elections Only. -- The only type of absentee voting that is not subject to the excuse requirements of subsection (a) of this section is one-stop voting as provided in G.S. 163-227.2 for elections held on the day of the general elections in November of even-numbered years.

(b) Absentee Ballots; Exceptions. -- Notwithstanding the authority contained in G.S. 163-226(a), absentee ballots shall not be permitted in fire district elections.

(c) The Term 'Election'. -- As used in this Subchapter, unless the context clearly requires otherwise, the term 'election' includes a general, primary, second primary, runoff election, bond election, referendum, or special election."

Section 2. G.S. 163-226.1 reads as rewritten:

"§ 163-226.1. *Absentee voting in primary.*

A qualified voter may vote by absentee ballot in a ~~statewide or countywide~~ partisan primary provided ~~he~~ the qualified voter is affiliated, at the time ~~he~~ the qualified voter makes application for absentee ballots, with the political party in whose primary ~~he~~ the qualified voter wishes to ~~vote~~ vote, except that an unaffiliated voter may vote in a party primary if permitted under G.S. 163-119. The official registration records of the county in which the voter is registered shall be proof of whether ~~he~~ the qualified voter is affiliated with a political party and of the party, if any, with which ~~he~~ the qualified voter is affiliated."

Section 3. G.S. 163-226.3 reads as rewritten:

"§ 163-226.3. *Certain acts declared felonies.*

(a) Any person who shall, in connection with absentee voting in any ~~primary, general, municipal or special~~ election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

- (1) For any person except the voter's near relative ~~as defined in G.S. 163-227(c)(4)~~ or the voter's verifiable legal guardian to assist the voter to vote an absentee ballot when the voter is voting an absentee ballot other than under the procedure described in G.S. 163-227.2; provided that if there is not a near relative or legal guardian available to assist the voter, the voter may request some other person to give assistance;
- (2) For any person to assist a voter to vote an absentee ballot under the absentee voting procedure authorized by G.S. 163-227.2 except a member of the county board of elections, the director of elections, an employee of the board authorized by the board, the voter's near relative ~~as defined in G.S. 163-227(c)(4)~~, or the voter's verifiable legal guardian;
- (3) For a voter who votes an absentee ballot under the procedures authorized by G.S. 163-227.2 to vote ~~his~~ that voter's absentee ballot outside of the voting booth or private

room provided to ~~him~~ the voter for that purpose in or adjacent to the office of the county board of elections or at the additional site provided by G.S. 163-227.2(f1), or to receive assistance in getting to and from the voting booth or private room and in preparing and marking ~~his~~ that voter's ballots from any person other than a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter ~~as defined in G.S. 163-227(c)(4)~~, or the voter's verifiable legal guardian;

- (4) For any owner, manager, director, employee, or other person, other than the voter's near relative ~~as defined in G.S. 163-227(c)(4)~~ or verifiable legal guardian, to make a written request pursuant to G.S. 163-230.1 or an application on behalf of a registered voter who is a patient in any hospital, clinic, nursing home or rest home in this State or for any owner, manager, director, employee, or other person other than the voter's near relative or verifiable legal guardian, ~~or officer authorized to administer oaths acting pursuant to G.S. 163-231(a)(1)~~, to mark the voter's absentee ballot or assist such a voter in marking an absentee ballot;
- (5) Repealed by Session Laws 1987, c. 583, s. 8.
- (6) For any person to take into ~~his~~ that person's possession for delivery to a voter or for return to a county board of elections the absentee ballot of any voter, provided, however, that this prohibition shall not apply to a voter's near relative ~~as defined in G.S. 163-227(c)(4)~~ or the voter's verifiable legal guardian;
- (7) Except as provided in subsections (1), (2), (3), and (4) of this section, G.S. 163-231(a), G.S. 163-250(a), and G.S. 163-227.2(e), for any voter to permit another person to assist ~~him~~ the voter in marking ~~his~~ that voter's absentee ballot, to be in the voter's presence when a voter votes an absentee ballot, or to observe the voter mark ~~his~~ that voter's absentee ballot.

(b) The State Board of Elections or a county board of elections, upon receipt of a sworn affidavit from any qualified voter of the State or the county, as the case may be, attesting to first-person knowledge of any violation of subsection (a) of this section, shall transmit ~~such that~~ that affidavit to the appropriate district attorney, who shall investigate and prosecute any person violating subsection (a)."

Section 4. G.S. 163-227 is repealed.

Section 5. G.S. 163-227.1 reads as rewritten:

"§ 163-227.1. *Second primary; applications for absentee ballots for voting in second primary.*

A voter applying for an absentee ballot for a primary election who will be ~~absent from the county of his residence~~ eligible to vote under this Article on the day of the primary and second primary shall be permitted by the county board of elections to indicate ~~such that~~ that fact on

~~his~~ that voter's application and ~~such that~~ that voter shall automatically be issued an application and absentee ballot for the second primary if one is called. The county board of elections shall consider ~~such that~~ indication a separate request for application for the second primary and, at the proper time, shall enter ~~such that~~ that voter's name in the absentee register along with the listing of other applicants for absentee ballots for the second primary.

In addition, a voter entitled to absentee ballots under the provisions of this Article who did not make application for the primary or who failed to apply for a second primary ballot at the time of application for a first primary ballot may ~~apply for~~ make a written request for absentee ballots for a second primary not earlier than the day a second primary is called and not later than ~~5:00 P.M. on the Tuesday prior to the date on which the second primary is held,~~ the date and time provided by G.S. 163-230.1.

All procedures with respect to absentee ballots in a second primary shall be the same as with respect to absentee ballots in a first primary except as otherwise provided by this section."

Section 6. G.S. 163-227.2 reads as rewritten:

"§ 163-227.2. *Alternate procedures for requesting application for absentee ballot; 'one-stop' voting procedure in board office.*

(a) ~~A~~ Except as provided in subsection (a1) of this section, a person expecting to be absent from the county in which ~~he~~ that person is registered during the entire period that the polls are open on the day of an election in which absentee ballots are authorized or is eligible under G.S. 163-226(a)(2), 163-226(a)(3a), or 163-226(a)(4) may request an application for absentee ballots, complete the application, ~~receive the absentee ballots, vote and deliver them sealed in a container-return envelope to the county board of elections in the county in which he is registered and vote~~ under the provisions of this section.

(a1) The excuse requirements of G.S. 163-226(a) do not apply to one-stop voting for elections held on the day of the general elections in November of even-numbered years.

(b) Not earlier than the first business day after the twenty-fifth day before an election, in which absentee ballots are authorized, in which ~~he~~ a voter seeks to vote and not later than 5:00 ~~P.M.~~ p.m. on the Friday prior to that election, the voter shall appear in person only at the office of the county board of ~~elections and~~ elections, except as provided in subsection (f1) of this section. That voter shall enter the voting enclosure at the board office through the appropriate entrance and shall at once state his or her name and place of residence to an authorized member or employee of the board. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party under G.S. 163-119, the voter shall state the name of the authorizing political party in whose primary he wishes to vote. The board member or employee to whom the voter gives this information

shall announce the name and residence of the voter in a distinct tone of voice. After examining the registration records, an employee of the board shall state whether the person seeking to vote is duly registered. If the voter is found to be registered that voter may request that the chairman, a member, authorized member or the director of elections of the board, or an employee of the board of elections, authorized by the board, furnish him the voter with an application form as specified in G.S. 163-227. The voter shall complete the application in the presence of the chairman, member, director of elections or authorized member or employee of the board, and shall deliver the application to that person.

(c) If the application is properly filled out, the chairman, member, director of elections of the board, or employee of the board of elections, authorized by the board, authorized member or employee shall enter the voter's name in the register of absentee ballot applications requests, applications, and ballots issued; shall furnish the voter with the instruction sheets called for by G.S. 163-229(c); and shall furnish the voter with the ballots to which the application for absentee ballots applies; and shall furnish the voter with a container-return envelope, applies. The voter thereupon shall comply with the provisions of G.S. 163-231(a) except that he shall deliver the container-return envelope to the chairman, member, supervisor of elections of the board, or an employee of the board of elections, authorized by the board, immediately after making and subscribing the certificate printed on the container-return envelope as provided in G.S. 163-229(b), vote in accordance with subsection (e) of this section.

All actions required by this subsection shall be performed in the office of the board of elections, elections, except that the voting may take place in an adjacent room as provided by subsection (e) of this section. For the purposes of this section only, the The application under this subsection shall be signed in the presence of the chairman, member, director of elections of the board, or full-time employee, authorized by the board who shall sign the application and certificate as the witness and indicate the official title held by him or her. Notwithstanding G.S. 163-231(a), in the case of this subsection, only one witness shall be required on the certificate.

(d) Only the chairman, member member, employee, or director of elections of the board shall keep the voter's application for absentee ballots and the sealed container-return envelope in a safe place, separate and apart from other applications and container-return envelopes. At the first meeting of the board pursuant to G.S. 163-230(2) held after receipt of the application and envelope, the chairman shall comply with the requirements of G.S. 163-230(1) and G.S. 163-230(2) b. and c. If the voter's application for absentee ballots is approved by the board at that meeting, the application form and container-return envelope, with the ballots enclosed, shall be handled in the same manner and under the same provisions of law as applications and container-return envelopes received by the board under other provisions of this Article. If the voter's application for

absentee ballots is disapproved by the board, the board shall so notify the voter stating the reason for disapproval by first-class mail addressed to the voter at ~~his that voter's~~ residence address ~~or and at~~ the address shown in the application for absentee ballots; and the board ~~chairman shall retain the container-return envelope in its unopened condition until the day of the primary or election to which it relates and on that day he shall destroy the container-return envelope and the ballots therein, without, however, revealing the manner in which the voter marked the ballots.~~ enter a challenge under G.S. 163-89.

(e) The voter shall vote ~~his that voter's~~ absentee ballot in a voting booth ~~in the office of the county board of elections,~~ and the county board of elections shall provide a voting booth for that purpose, provided however, that the county board of elections may in the alternative provide a private room for the voter adjacent to the office of the board, in which case the voter shall vote ~~his that voter's~~ absentee ballot in that room. ~~The voting booth shall be in the office of the county board of elections.~~ If the voter needs assistance in getting to and from the voting booth and in preparing and marking ~~his that~~ voter's ballots or if ~~he the voter~~ is a blind voter, only a member of the county board of elections, the director of elections, an employee of the board of elections authorized by the board, a near relative of the voter ~~as defined in G.S. 163-227(c)(4),~~ or the voter's verifiable legal guardian shall be entitled to assist the voter.

(e1) If a county uses a voting system with retrievable ballots, that county's board of elections may by resolution elect to conduct one-stop absentee voting according to the provisions of this subsection. In a county in which the board has opted to do so, a one-stop voter shall cast the ballot and then shall deposit the ballot in the ballot box or voting system in the same manner as if such box or system was in use in a precinct on election day. At the end of each business day, or at any time when there will be no employee or officer of the board of elections on the premises, the ballot box or system shall be secured in accordance with a plan approved by the State Board of Elections, which shall include that no additional ballots have been placed in the box or system. Any county board desiring to conduct one-stop voting according to this subsection shall submit a plan for doing so to the State Board of Elections. The State Board shall adopt standards for conducting one-stop voting under this subsection and shall approve any county plan that adheres to its standards. The county board shall adhere to its State Board-approved plan. The plan shall provide that each one-stop ballot shall have a ballot number on it in accordance with ~~G.S. 163-230(3)a,~~ 163-230.1(a2), or shall have an equivalent identifier to allow for retrievability. The standards shall address retrievability in one-stop voting on direct record electronic equipment where no paper ballot is used.

(f) Notwithstanding the exception specified in G.S. 163-36, counties which operate a modified full-time office shall remain open five days each week during regular business hours consistent with

daily hours presently observed by the county board of elections, commencing with the date prescribed in G.S. 163-227.2(b) and continuing until 5:00 ~~P.M.~~ p.m. on the Friday prior to that election or primary. The boards of county commissioners shall provide necessary funds for the additional operation of the office during ~~such~~ that time.

(f1) Notwithstanding any other provision of this section, a county board of elections by unanimous vote of all its members may provide for one or more sites in that county for absentee ballots to be applied for and cast under this section. Any site other than the county board of elections office shall be in any building or part of a building that the county board of elections is entitled under G.S. 163-129 to demand and use as a voting place. Every individual staffing any of those sites shall be a member or full-time employee of the county board of elections or an employee of the county board of elections whom the board has given training equivalent to that given a full-time employee. Those sites must be approved by the State Board of Elections as part of a Plan for Implementation approved by both the county board of elections and by the State Board of Elections which shall also provide adequate security of the ballots and provisions to avoid allowing persons to vote who have already voted. The Plan for Implementation shall include a provision for the presence of political party observers at each one-stop site equivalent to the provisions in G.S. 163-45 for party observers at voting places on election day.

(f2) Notwithstanding the provisions of G.S. 163-89(a) and (b), a challenge may be entered against a voter at a one-stop site under subsection (f1) of this section or during one-stop voting at the county board office. The challenge may be entered by a person conducting one-stop voting under this section or by another registered voter who resides in the same precinct as the voter being challenged. If challenged at the place where one-stop voting occurs, the voter shall be allowed to cast a ballot in the same way as other voters. The challenge shall be made on forms prescribed by the State Board of Elections. The challenge shall be heard by the county board of elections in accordance with the procedures set forth in G.S. 163-89(e)."

Section 7. G.S. 163-228 reads as rewritten:

"§ 163-228. ~~Register of absentee ballot applications requests, applications, and ballots issued; a public record.~~

The State Board of Elections shall ~~design~~ approve an official register and provide a source of supply thereof from in which the chairman of the county board of elections in each county of the State shall purchase a book to be called the register of absentee ballot applications and ballots issued in which shall be recorded record the following information:

- (1) Name of voter for whom application and ballots are being requested, and, if applicable, the name and address of the voter's near relative or verifiable legal guardian who requested the application and ballots for the voter.

- (2) Number of assigned voter's application when issued.
- (3) Precinct in which applicant is registered.
- (4) Address to which ballots are to be mailed, or, if the voter voted pursuant to G.S. 163-227.2, a notation of that fact.
- (5) Reason assigned for requesting absentee ballots.
- (6) Date request for application for ballots is received by the county board of elections.
- (7) The voter's party affiliation.
- (8) The date the ballots were mailed or delivered to the voter.
- (9) ~~whatever~~ Whatever additional information and official action may be required by this Article.

The State Board of Elections may provide for the register to be kept by electronic data processing equipment, and a copy shall be printed out each business day or a supplement printed out each business day of new information.

The register of absentee ballot applications requests, applications, and ballots issued shall constitute a public record and shall be opened to the inspection of any registered voter of the county at any time within 50 days before and 30 days after an election in which absentee ballots were authorized, or at any other time when good and sufficient reason may be assigned for its inspection."

Section 8. G.S. 163-229 reads as rewritten:

"§ 163-229. Absentee ballots, applications on container-return envelopes, and instruction sheets.

(a) Absentee Ballot Form. -- In accordance with the provisions of G.S. ~~163-230(3),~~ 163-230.1, persons entitled to vote by absentee ballot shall be furnished with regular official ballots. ~~Separate or distinctly marked absentee ballots shall not be used.~~

(b) Application on Container-Return Envelope. -- In time for use not later than 50 days before a statewide primary, general election or county bond election, the county board of elections shall print a sufficient number of envelopes in which persons casting absentee ballots may transmit their marked ballots to the ~~chairman of the~~ county board of elections. Each container-return envelope shall have printed on it an application which shall be designed and prescribed by the State Board of Elections, the voter's certification of eligibility to vote the enclosed ballot and of having voted the enclosed ballot in accordance with this Article, a space for identification of the envelope with the voter, and a space for approval by the county board of elections. The envelope shall allow reporting of a change of name as provided by G.S. 163-82.16. The container-return envelope shall be printed in accordance with the following instructions: instructions of the State Board of Elections.

- (1) ~~On one side shall be printed an identified space in which shall be inserted the application number of the voter and the following statement which shall be certified by one member of the county board of elections:~~

~~"Certification of Election Official~~

~~The undersigned election official does by his hand and seal certify that..... is a registered and qualified voter of County, Precinct # and has made proper application to vote under the Absentee Ballot Law of North Carolina.~~

~~(Seal)~~

~~Chairman-Member"~~

- ~~(2) On the other side shall be printed the return address of the chairman of the county board of elections and the following certificate:~~

~~"Certificate of Absentee or Sick Voter~~

~~State of _____~~

~~County of _____~~

~~I,, do certify that I am a resident and registered voter in precinct, County, North Carolina; that on the day of an election,, (check whichever of the following statements is correct.)~~

~~[] I will be absent from the county in which I reside.~~

~~[] Due to sickness or physical disability, or incarceration as a misdemeanor, I will be unable to travel to the voting place in the precinct in which I reside.~~

~~[] Due to the observance of a religious holiday pursuant to the tenets of my religion, I will be unable to cast a ballot at the polling place on the day of the election.~~

~~I further certify that I made application for absentee ballots, and that I marked the ballots enclosed herein, or that they were marked for me in my presence and according to my instructions. I understand it is a felony to falsely sign this certificate.~~

~~_____(Signature of voter)~~

~~.....
Signature of Witness #1 _____~~

~~.....
Signature of Witness #2 _____~~

~~.....
Address of Witness #1 _____~~

~~.....
Address of Witness #2" _____~~

~~(c) Instruction Sheets. -- In time for use not later than 50 days before a statewide primary, general or county bond election, the county board of elections shall prepare and print a sufficient number of sheets of instructions on how voters are to prepare absentee ballots and return them to the chairman of the county board of elections."~~

~~Section 9. G.S. 163-230 is repealed.~~

~~Section 10. G.S. 163-230.1 reads as rewritten:~~

~~"§ 163-230.1. Simultaneous issuance of absentee ballots with application.~~

(a) ~~When a~~ A qualified voter personally requests by mail who is eligible to vote by absentee ballot under G.S. 163-226(a)(1), or that voter's near relative or verifiable legal guardian, shall request in writing an application for absentee ballots, so that the county board of elections receives the request not later than 5:00 p.m. on the Tuesday before the election. ~~an application for absentee ballots.~~ The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. Upon receiving the application, the county board of elections shall cause to be mailed to that voter in a single package:

- (1) The official ballots the voter is entitled to ~~vote if his application is approved;~~ vote;
- (2) A container-return envelope for the ballots, ~~upon the outside of which shall be printed the appropriate application form as provided in G.S. 163-227;~~ printed in accordance with G.S. 163-229; and
- (3) ~~A large envelope (similar to a No. 14 or larger manila envelope) in which the container-return envelope with the ballots may be returned and on which the affidavit provided by G.S. 163-229(b) shall be printed; and~~
- (4) An instruction sheet.

The ballots, ~~envelopes~~ envelope, and instructions shall be mailed to the voter by the county board's ~~chairman, secretary or director~~ chairman, member, officer, or employee as determined by the board and entered in ~~its official minutes.~~ the register as provided by this Article.

~~On the back of the large transmittal envelope shall be clearly printed or stamped the following statement:~~

~~DO NOT PLACE THE ENVELOPE CONTAINING YOUR BALLOTS INTO THIS ENVELOPE UNTIL YOU HAVE COMPLETED THE APPLICATION ON THE ENVELOPE CONTAINING YOUR BALLOTS AND SECURED THE SIGNATURE OF A WITNESS.~~

(a1) Absence for Sickness or Physical Disability. -- Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make written request in person for absentee ballots to the board of elections of the county in which the voter is registered after 5:00 p.m. on the Tuesday before the election but not later than 5:00 p.m. on the day before the election. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. The county board of elections shall personally deliver to the requester in a single package:

- (1) The official ballots the voter is entitled to vote;

- (2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229; and
- (3) An instruction sheet.

(a2) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. -- When the county board of elections receives a request for applications and absentee ballots, the board shall promptly issue and transmit them to the voter in accordance with the following instructions:

- (1) On the top margin of each ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the board of elections shall write or type the words 'Absentee Ballot No.' or an abbreviation approved by the State Board of Elections and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and ballots issued. That person shall not write, type, or print any other matter upon the ballots transmitted to the absentee voter. Alternatively, the board of elections may cause to be barcoded on the ballot the voter's application number, if that barcoding system is approved by the State Board of Elections.
- (2) The chair, member, officer, or employee of the board of elections shall fold and place the ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the ballot is barcoded under this section, the envelope may be barcoded rather than having the actual number appear. The person placing the ballots in the envelopes shall leave the container-return envelope holding the ballots unsealed.
- (3) The chair, member, officer, or employee of the board of elections shall then place the unsealed container-return envelope holding the ballots together with printed instructions for voting and returning the ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county board of elections: Provided, that in case of a request received after 5:00 p.m. on the Tuesday before the election under the provisions of subsection (a1) of this section, in lieu of transmitting the ballots to the voter in person or by mail, the chair, member, officer, or employee of the board of elections may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the ballots to a near relative or verifiable legal guardian of the voter.

The county board of elections may receive written requests for applications earlier than 50 days prior to the election but shall not

mail applications and ballots to the voter or issue applications and ballots in person earlier than 50 days prior to the election, except as provided in G.S. 163-227.2. No election official shall issue applications for absentee ballots except in compliance with this Article.

(b) The application shall be ~~completed~~, completed and signed by the voter personally, the ballots marked, the ballots sealed in the container-return envelope, and the large envelope affidavit certificate completed as provided in G.S. 163-227 and G.S. 163-231. The container-return envelope shall be placed in the large transmittal envelope for return to the chairman of the county board of elections.

(c) At its next official meeting after return of the completed container-return envelope and large envelope with the voter's ballots, the county board of elections shall determine whether the container-return envelope and large envelope have has been properly executed. If the board determines that both the container-return envelope and large envelope have has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the ballots counted at the same time as all other container-return envelopes and absentee ballots.

(c1) Required Meeting of County Board of Elections. -- During the period commencing on the third Tuesday before an election, in which absentee ballots are authorized, the county board of elections shall hold one or more public meetings each Tuesday at 5:00 p.m. for the purpose of action on applications for absentee ballots. At these meetings, the county board of elections shall pass upon applications for absentee ballots.

If the county board of elections changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board of elections makes its decision on an application for absentee ballots, the board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was 'Approved' or 'Disapproved'.

The decision of the board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board of elections shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chairman or any other member of the board individually.

(d) ~~The provisions of this section shall apply only to requests received by mail from and signed by the voter individually and personally. No near relative, guardian, or other person other than the~~

~~voter himself shall be permitted to apply for absentee ballots under this section.~~

(e) The State Board of Elections, by ~~regulation~~ rule or by instruction to the county board of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section.

(f) For the purpose of this Article, 'near relative' means spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, stepparent, or stepchild."

Section 11. G.S. 163-231 reads as rewritten:

"§ 163-231. *Voting absentee ballots and transmitting them to ~~chairman~~ of the county board of elections.*

(a) Procedure for Voting Absentee Ballots. -- In the presence of two other persons who are at least 18 years of age, and who are not disqualified by G.S. 163-226.3(a)(4) or G.S. 163-237(b1), the voter shall:

- (1) Mark ~~his~~ the voter's ballots, or cause them to be marked by one of such persons in ~~his~~ the voter's presence according to ~~his~~ the voter's instruction;
- (2) Fold each ballot separately, or cause each of them to be folded in ~~his~~ the voter's presence;
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in ~~his~~ the voter's presence;
- (4) Make the application printed on the container-return envelope according to the provisions of G.S. 163-229(b) and make the certificate printed on the container-return envelope according to the provisions of G.S. 163-229(b).

The persons in whose presence the ballot is marked shall at all times respect the secrecy of the ballot and the privacy of the absentee voter, unless the voter requests their assistance and they are otherwise authorized by law to give assistance. The persons in whose presence the ballot was marked shall sign the application and certificate as witnesses, and shall indicate their address. When thus executed, the sealed container-return envelope, with the ballots enclosed, shall be transmitted in accordance with the provisions of subsection (b) of this section to the ~~chairman of the~~ county board of elections ~~who~~ which issued the ballots.

(a1) Repealed by Session Laws 1987, c. 583, s. 1.

(b) Transmitting Executed Absentee Ballots to ~~Chairman of~~ County Board of Elections. -- The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the ~~chairman of the~~ county board of elections who issued them as follows: All ballots issued under the provisions of Articles 20 and 21 of this Chapter shall be transmitted by ~~mail~~, mail or by commercial courier service, at the voter's expense, or delivered in person, or by the voter's ~~spouse, brother, sister, parent, grandparent, child or grandchild~~ near relative or verifiable legal guardian not later than 5:00 P.M. ~~p.m.~~ on the day before the statewide primary or general election or county bond election. If such ballots are received later than that

hour, they shall not be accepted for ~~voting~~, unless federal law so requires."

Section 12. G.S. 163-232 reads as rewritten:

"§ 163-232. *Certified list of executed absentee ballots; distribution of list.*

The ~~chairman of the~~ county board of elections shall prepare, or cause to be prepared, a list in at least quadruplicate, of all absentee ballots returned to the county board of elections to be counted, which have been approved by the county board of ~~elections~~, elections, and which have been received as of 5:00 p.m. on the day before the election. At the end of the list, the chairman shall execute the following certificate under oath:

'State of North Carolina

County of

I,, chairman of the County board of elections, do hereby certify that the foregoing is a list of all executed absentee ballots to be voted in the election to be conducted on the day of, 19, which have been approved by the county board of ~~elections~~, elections and which have been returned no later than 5:00 p.m. on the day before the election. I further certify that I have issued ballots to no other persons than those listed herein, whose original applications or original applications made by near relatives are filed in the office of the county board of elections; and I further certify that I have the chairman, member, officer, or employee of the board of elections has not delivered ballots for absentee voting to any person other than the voter himself, voter, by mail or by commercial courier service or in person, except as provided by law, in the case of approved applications received after 5:00 P.M. on the Tuesday or Friday before the election, and have not mailed or delivered ballots when the request for the ballot was received after the deadline provided by law.

This the day of, 19

.....

(Signature of chairman of county board of elections)

Sworn to and subscribed before me this day of, 19 Witness my hand and official seal.

.....

(Signature of officer administering oath)

.....

(Title of officer)'

No ~~earlier than 3:00 P.M. on the day before the election and no later than 10:00 A.M.~~ a.m. on election day, the chairman county board of elections shall cause one copy of the list of executed absentee ballots, which may be a continuing countywide list or a separate list for each precinct, to be immediately deposited as 'first-class' mail to the State Board of Elections. ~~He~~ The board shall retain one copy in the board office for public inspection and ~~he~~ the board shall cause two copies of the appropriate precinct list to be delivered to the chief judge of each precinct in the county. The ~~chairman~~ county board of

elections shall be authorized to call upon the sheriff of the county to distribute the list to the precincts. In addition the ~~chairman~~ county board of elections shall, upon request, provide a copy of the complete list to the chairman of each political party, recognized under the provisions of G.S. 163-96, represented in the county.

The chief judge shall post one copy of the list immediately in a conspicuous location in the voting place and retain one copy until all challenges of absentee ballots have been heard by the county board of elections. Challenges shall be made to absentee ballots as provided in G.S. 163-89.

After receipt of the list of absentee voters required by this section the chief judge shall call the name of each person recorded on the list and enter an 'A' in the appropriate voting square on the voter's permanent registration ~~record, record,~~ or a similar entry on the computer list used at the polls. If such person is already recorded as having voted in that election, the chief judge shall enter a challenge which shall be presented to the ~~chairman of the~~ county board of elections for resolution by the board of elections prior to certification of results by the board.

All lists required by this section shall be retained by the county board of elections for a period of ~~four years~~ 22 months after which they may then be destroyed."

Section 13. G.S. 163-233 reads as rewritten:

"§ 163-233. *Applications for absentee ballots; how retained.*

The ~~chairman of the~~ county board of elections shall retain, in a safe place, the original of all applications made for absentee ballots and shall make them available to inspection by the State Board of Elections or to any person upon the directive of the State Board of Elections.

All applications for absentee ballots shall be retained by the county board of elections for a period of one year after which they may be destroyed."

Section 14. G.S. 163-234 reads as rewritten:

"§ 163-234. *Counting absentee ballots by county board of elections.*

All absentee ballots returned to the ~~chairman or supervisor of elections of the~~ county board of elections in the container-return envelopes shall be retained by the chairman board to be counted by the county board of elections as herein provided.

- (1) Only those absentee ballots returned to the county board of elections no later than 5:00 ~~P.M.~~ p.m. on the day before election day in a properly executed container-return envelope shall be ~~counted,~~ counted, except to the extent federal law requires otherwise.
- (2) The county board of elections shall meet at 5:00 ~~P.M.~~ p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 ~~P.M.~~ p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided ~~he~~ the elector shall

not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 ~~P.M.~~ p.m. and 5:00 ~~P.M.~~ p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable ~~necessity~~. necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots, and except that one-stop ballots under G.S. 163-227.2 counted electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop ballots requires them to be put in a tabulator but the process has the voter place them in a ballot box. The board shall not announce the result of the count before 7:30 ~~P.M.~~ p.m.

- (3) The counting of absentee ballots shall not commence until a majority and at least one board member of each political party represented on the board is present and ~~such~~ that fact is publicly declared and entered in the official minutes of the county board.
- (4) The county board of elections may employ such assistants as deemed necessary to count the absentee ballots, but each board member present shall be responsible for and observe and supervise the opening and tallying of the ballots.
- (5) As each ballot envelope is opened, the board shall cause to be entered into a pollbook designated 'Pollbook of Absentee Voters' the name of the absentee ~~voter~~, voter, or if the pollbook is computer-generated, the board shall check off the name. Preserving secrecy, the ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot. The 'Pollbook of Absentee Voters' shall also contain the names of all persons who voted under G.S. 163-227.2, but those names may be printed by computer for inclusion in the pollbook.

After all ballots have been placed in the boxes, the counting process shall begin.

If one-stop ballots under G.S. 163-227.2 are counted electronically, that count shall commence at the time the polls close. If one-stop ballots are paper ballots counted manually, that count shall commence at the same time as other absentee ballots are counted.

If a challenge transmitted to the board on canvass day by a chief judge is sustained, the ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required herein, the board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The ~~chairman~~ county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

- (6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections, ~~Raleigh, North Carolina 27602.~~ Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.
- (7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.
- (8) In the event a political party does not have a member of the county board of elections present at the ~~5:00 P.M.~~ meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an 'observer.'
- (9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot."

Section 15. G.S. 163-236 reads as rewritten:

"§ 163-236. *Violations by ~~chairman of~~ county board of elections.*

The ~~chairman of the~~ county board of elections shall be sole custodian of blank applications for absentee ballots, official ballots, and container-return envelopes for absentee ballots. ~~He~~ The board shall issue and deliver blank applications for absentee ballots in strict accordance with the provisions of G.S. ~~163-227(c).~~ 163-230.1. The issuance of ballots to persons whose ~~applications requests~~ requests for absentee ballots have been ~~approved~~ received by the county board of elections under the provisions of G.S. ~~163-230(3)~~ 163-230.1 is the responsibility and duty of the ~~chairman of the~~ county board of elections.

It shall be the duty of the ~~chairman of the~~ county board of elections to keep current all records required of ~~him~~ by this Article and to make promptly all reports required of ~~him~~ by this Article. If that duty has been assigned to the chair, member, officer, or employee of the board of elections, that person shall carry out the duty.

The willful violation of this section shall constitute a Class 2 misdemeanor."

Section 16. G.S. 163-82.7(g)(2) reads as rewritten:

"(2) If the Postal Service has returned as undeliverable a notice sent within 25 days before the election to the applicant under subsection (c) of this section, then the applicant may vote only in person in that first election and may not vote by ~~mailed absentee ballot.~~ ballot except in person under G.S. 163-227.2. The county board of elections shall establish a procedure at the voting site for:

- a. Obtaining the correct address of any person described in this subdivision who appears to vote in person; and
- b. Assuring that the person votes in the proper place and in the proper contests.

If a notice mailed under subsection (c) or subsection (e) of this section is returned as undeliverable after a person has already voted by absentee ballot, then that person's ballot may be challenged in accordance with G.S. 163-89."

Section 17. G.S. 163-137(b) reads as rewritten:

"(b) The ballots prepared for use in general and special elections under the provisions of this Article by the State Board of Elections shall be printed and delivered to the county boards of elections at least ~~60~~ 50 days prior to the date of any election in which absentee voting is permitted and at least 60 days prior to the date of any election in which absentee voting is not permitted. election."

Section 18. G.S. 163-155(4) reads as rewritten:

"(4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the voting place by this section. In any precinct using direct record electronic voting equipment, the county board of elections, with the approval of the State Board of Elections, may

provide for all such paper ballots to be transported upon closing of the polls to the office of the county board of elections for counting. Those ballots may be transported only by the chief judge, judge, or assistant. Upon receipt by the county board of elections, those ballots shall be counted and canvassed in the same manner as one-stop ballots cast under G.S. 163-227.2, except that rather than the count commencing when the polls close under G.S. 163-234(5) as provided for one-stop ballots, the count shall commence when the board has received from each precinct either that precinct's ballots or notification that no such ballots were cast.

The total for ballots counted by the county board of elections under this subdivision shall be canvassed as if it were a separate precinct."

Section 19. G.S. 163-169(i) reads as rewritten:

"(i) Absentee Ballots. -- Absentee ballots shall be deposited and voted in accordance with the provisions of G.S. 163-227.2 and G.S. 163-234; they shall be counted and tabulated as provided in this section and G.S. 163-170."

Section 20. Article 21 is amended by adding a new section to read:

"§ 163-257. Facsimile and electronic mail transmission of election materials.

An applicant entitled to exercise the rights conferred by this Article may apply for registration and an absentee ballot by facsimile or electronic mail if otherwise qualified to apply for and vote by absentee ballot. A county board of elections may send and receive absentee ballot applications and accept voted ballots by facsimile or electronic mail from eligible electors as defined in G.S. 163-245. The State Board of Elections shall promulgate uniform rules for the use of facsimiles and electronic mail in application and voting under this section, and all county boards of elections shall adhere to those rules."

Section 21. G.S. 163-274(5a) is repealed.

Section 22. G.S. 163-237 is amended by adding a new subsection to read:

"(b1) Candidate Witnessing Absentee Ballots of Nonrelative Made Class 2 Misdemeanor. -- A person is guilty of a Class 2 misdemeanor if that person acts as a witness under G.S. 163-231(a) or G.S. 163-250(a) in any primary or election in which the person is a candidate for nomination or election, unless the voter is the candidate's near relative as defined in G.S. 163-230.1(f)."

Section 23. Article 3 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-27.1. Emergency powers.

The Executive Secretary-Director, as chief State elections official, may exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by any of the following:

(1) A natural disaster.

(2) Extremely inclement weather.

(3) An armed conflict involving United States armed forces, or mobilization of those forces, including State National Guard and reserve components.

In exercising those emergency powers, the Executive Secretary-Director shall avoid unnecessary conflict with the provisions of this Chapter. The Executive Secretary-Director shall adopt rules describing the emergency powers and the situations in which the emergency powers will be exercised."

Section 24. This act applies to elections held on or after January 1, 2000, except that the State Board of Elections may issue rules required or permitted by this act prior to that date.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 4:05 p.m. on the 13th day of August, 1999.

H.B. 162

SESSION LAW 1999-456

AN ACT TO MAKE TECHNICAL CORRECTIONS AND CONFORMING CHANGES TO THE GENERAL STATUTES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION; AND TO MAKE VARIOUS OTHER CHANGES TO THE GENERAL STATUTES AND SESSION LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 29-12 reads as rewritten:

"§ 29-12. *Escheats.*

If there is no person entitled to take under G.S. 29-14 or 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or 29-22 the net estate shall escheat as provided in G.S. 116A-2, G.S. 116B-2."

Section 2. G.S. 32A-14.1 reads as rewritten:

"§ 32A-14.1. *Gifts under power of attorney.*

(a) Except as provided in subsection (b) of this section, if any power of attorney authorizes an attorney-in-fact to do, execute, or perform any act that the principal might or could do or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs or deal with the principal's property, the attorney-in-fact shall have the power and authority to make gifts in any amount of any of the principal's property to any individual or to any organization described in sections 170(c) and ~~2422(a)~~ 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. As used in this subsection, "Internal Revenue Code" means the "Code" as defined in G.S. 105-2.1.

(b) Except as provided in subsection (c) of this section, or unless gifts are expressly authorized by the power of attorney, a power

described in subsection (a) of this section may not be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact.

(c) If the power of attorney described in subsection (a) of this section is conferred upon two or more attorneys-in-fact, it may be exercised by the attorney-in-fact or attorneys-in-fact who are not disqualified by subsection (b) of this section from exercising the power of appointment as if they were the only attorney-in-fact or attorneys-in-fact. If the power of attorney described in subsection (a) of this section is conferred upon one attorney-in-fact, the power of attorney may be exercised by the attorney-in-fact in favor of the attorney-in-fact or the estate, creditors, or the creditors of the estate of the attorney-in-fact pursuant to an order issued by the clerk in accordance with the procedures and provisions of Article 2B of this Chapter.

(d) Subsection (a) of this section shall not in any way impair the right, power, or ability of any principal, by express terms in the power of attorney, to authorize or limit the authority of any attorney-in-fact to make gifts of the principal's property.

(e) An attorney-in-fact expressly authorized by this section to make gifts of the principal's property may elect to request that the clerk of the superior court issue an order approving a gift or gifts of the property of the principal.

(f) This section shall apply to all powers of attorney executed prior to, on, or after ~~the effective date of this section, October 1, 1995.~~

Section 3. G.S. 55-1-40(9) reads as rewritten:

"(9) 'Entity' includes (without limiting the meaning of such term in Article 9) corporation and foreign corporation; nonprofit corporation; professional corporation; limited liability company; profit and nonprofit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government."

Section 4. G.S. 122C-57(d) through (f) read as rewritten:

"(d) Each voluntarily admitted client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of ~~attorney,~~ attorney has the right to consent to or refuse any treatment offered by the facility. Consent may be withdrawn at any time by the person who gave the consent. If treatment is refused, the qualified professional shall determine whether treatment in some other modality is possible. If all appropriate treatment modalities are refused, the voluntarily admitted client may be discharged. In an emergency, a voluntarily admitted client may be administered treatment or medication, other than those specified in subsection (f) of this section, despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid advance instruction for mental health treatment. The Commission may adopt rules to provide a procedure to be followed when a voluntarily admitted client refuses treatment.

(d1) Except as provided in G.S. 90-21.4, discharge of a voluntarily admitted minor from treatment shall include notice to and consultation with the minor's legally responsible person and in no event shall a minor be discharged from treatment upon the minor's request alone.

(e) In the case of an involuntarily committed client, treatment measures other than those requiring express written consent as specified in subsection (f) of this section may be given despite the refusal of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's refusal expressed in a valid ~~advanced~~ advance instruction for mental health treatment ~~or an attorney-in-fact named pursuant to a valid instruction for mental health treatment~~ in the event of an emergency or when consideration of side effects related to the specific treatment measure is given and in the professional judgment, as documented in the client's record, of the treating physician and a second physician, who is either the director of clinical services of the facility, or the director's designee, either:

(1) The client, without the benefit of the specific treatment measure, is incapable of participating in any available treatment plan which will give the client a realistic opportunity of improving the client's condition;

(2) There is, without the benefit of the specific treatment measure, a significant possibility that the client will harm self or others before improvement of the client's condition is realized.

(f) Treatment involving electroshock therapy, the use of experimental drugs or procedures, or surgery other than emergency surgery may not be given without the express and informed written consent of the client, the client's legally responsible person, a health care agent named pursuant to a valid health care power of attorney, or the client's consent expressed in a valid ~~advanced~~ advance instruction ~~or for mental health treatment~~. This consent may be withdrawn at any time by the person who gave the consent. The Commission may adopt rules specifying other therapeutic and diagnostic procedures that require the express and informed written consent of the client, the client's legally responsible person, or a health care agent named pursuant to a valid health care power of attorney, or an attorney-in-fact named pursuant to a valid advance instruction for mental health treatment prior to their initiation. attorney."

Section 5. G.S. 122C-211(f1) reads as rewritten:

"(f1) An individual in need of treatment for mental illness may be admitted to a facility pursuant to an advance instruction for mental health treatment or pursuant to the authority of a health care agent named in a valid health care power of attorney, provided that the individual is incapable, as defined in ~~G.S. 122C-72(c)~~ G.S. 122C-72(4) at the time of the need for admission. An individual admitted to a facility pursuant to an advance instruction for mental health treatment may not be retained for more than 10 days, except as provided for in subsection (b) of this section. When a health care

power of attorney authorizes a health care agent to seek the admission of an incapable individual, the health care agent shall act for the individual in applying for admission to a facility and in consenting to medical treatment at the facility when consent is required, provided that the individual is incapable."

Section 6. G.S. 131E-23(a)(20) reads as rewritten:

"(20) ~~Subject to subsection (c), to~~ To lease any hospital facilities to or from any municipality, other public agency of this or any other state or of the United States, or to any individual, corporation, or association upon any terms and subject to any conditions as may carry out the purposes of this Part. ~~Subject to subsection (c), the~~ The authority may provide for the lessee to use, operate, manage and control the hospital facilities, and to exercise designated powers, in the same manner as the authority itself might do;"

Section 7. G.S. 143-56 reads as rewritten:

"§ 143-56. *Certain purchases excepted from provisions of Article.*

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

- (1) Published books, manuscripts, maps, pamphlets and periodicals.
- (2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than the expenditure benchmark established under the provisions of G.S. 143-53.1, for group purchases made by hospitals through a competitive bidding purchasing program, as defined in ~~G.S. 143-29~~, G.S. 143-129, by the University of North Carolina Health Care System pursuant to G.S. 116-37(h), by the University of North Carolina Hospitals at Chapel Hill pursuant to G.S. 116-37(a)(4), by the University of North Carolina at Chapel Hill on behalf of the clinical patient care programs of the School of Medicine of the University of North Carolina at Chapel Hill pursuant to G.S. 116-37(a)(4), or by East Carolina University on behalf of the Medical Faculty Practice Plan pursuant to G.S. 116-40.6(c).

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

Section 8. Effective December 1, 1999, G.S. 1-539.2A(b), as enacted by Section 4 of S.L. 1999-212, reads as rewritten:

"(b) A civil action under this section shall be commenced before expiration of the time period prescribed in G.S. 1-54. In actions alleging injury arising from the transmission of unsolicited bulk commercial electronic mail, personal jurisdiction may be exercised pursuant to G.S. ~~1-75.4(13)~~, 1-75.4."

Section 9.(a) The prefatory language of Section 4 of Senate Bill 974, 1999 Regular Session, is rewritten to read:

"Section 4. G.S. 7A-292 reads as rewritten:"

Section 9.(b) If Senate Bill 974, 1999 Regular Session, becomes law, then effective January 1, 2000, G.S. 7A-292, as rewritten by Section 4 of Senate Bill 974, 1999 Regular Session, reads as rewritten:

"§ 7A-292. *Additional powers of magistrates.*

In addition to the jurisdiction and powers assigned in this Chapter to the magistrate in civil and criminal actions, each magistrate has the following additional powers:

- (1) To administer oaths;
- (2) To punish for direct criminal contempt subject to the limitations contained in Chapter 5A of the General Statutes of North Carolina;
- (3) When authorized by the chief district judge, to take depositions and examinations before trial;
- (4) To issue subpoenas and capiases valid throughout the county;
- (5) To take affidavits for the verification of pleadings;
- (6) To issue writs of habeas corpus ad testificandum, as provided in G.S. 17-41;
- (7) To assign a year's allowance to the surviving spouse and a child's allowance to the children as provided in Chapter 30, Article 4, of the General Statutes;
- (8) To take acknowledgments of instruments, as provided in G.S. 47-1;
- (9) To perform the marriage ceremony, as provided in G.S. 51-1;
- (10) To take acknowledgment of a written contract or separation agreement between husband and wife; and
- (11) Repealed by Session Laws 1973, c. 503, s. 9.
- (12) To assess contribution for damages or for work done on a dam, canal, or ditch, as provided in G.S. 156-15.
- (13) Repealed by Session Laws 1973, c. 503, s. 9.
- (14) ~~If the office the clerk of superior court is closed, to accept the filing of a complaint and to issue a summons in cases for expedited eviction proceedings under Article 4 of Chapter 42A of the General Statutes.~~ To accept the filing of complaints and to issue summons pursuant to Article 4 of Chapter 42A of the General Statutes in expedited eviction

proceedings when the office of the clerk of superior court is closed."

Section 10. G.S. 18B-603(d) reads as rewritten:

"(d) Mixed Beverage Elections. -- If a mixed beverage election is held under G.S. 18B-602(h) and the sale of mixed beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

- (1) The Commission may issue mixed beverage permits.
- (2) The Commission may issue on-premises malt beverage, unfortified wine, and fortified wine permits for establishments with mixed beverage permits, regardless of any other election or any local act concerning sales of those kinds of alcoholic beverages.
- (3) The Commission may issue off-premises malt beverage permits to any establishment that meets the requirements under G.S. 18B-1001(2) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages. The Commission may also issue off-premises unfortified wine permits to any establishment that meets the requirements under G.S. 18B-1001(4) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages.
- (4) The Commission may issue brown-bagging permits for private clubs and congressionally chartered veterans organizations but may no longer issue and may not renew brown-bagging permits for restaurants, hotels, and community theatres. A restaurant, hotel, or community theatre may not be issued a mixed beverage permit under subdivision (1) until it surrenders its brown-bagging permit.
- (5) The Commission may continue to issue culinary permits for establishments that do not have mixed beverage permits. An establishment may not be issued a mixed beverage permit under subdivision (1) until it surrenders its culinary permit.

In any county in which the sale of mixed beverages has been approved in elections in at least three cities that, combined, contain more than two-thirds the total county population as of the most recent federal census, the county board of commissioners may by resolution approve the sale of mixed beverages throughout the county, and the Commission may issue permits as if mixed beverages had been approved in a county election.

If a county or city holds a mixed beverage election and an ABC store election at the same time and the voters do not approve the establishment of an ABC store, the Commission may ~~not~~ issue mixed beverages permits in that county or city. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the county."

Section 11. G.S. 20-28.5(a) reads as rewritten:

"(a) Sale. -- A motor vehicle ordered forfeited and sold or a seized motor vehicle authorized to be sold pursuant to G.S. 20-28.3(i), shall be sold at a public sale conducted in accordance with the provisions of Article 12 of Chapter 160A of the General Statutes, applicable to sales authorized pursuant to G.S. 160A-266(a)(2), (3), or (4), subject to the notice requirements of this subsection, and shall be conducted by the county board of education or a person acting on its behalf. Notice of sale, including the date, time, location, and manner of sale, shall be given by first-class mail to all motor vehicle owners of the vehicle to be sold at the address shown by the records of the Division. ~~Division and at any other address of the motor vehicle owner as may be found in the criminal file in which the forfeiture was ordered.~~ Written notice of sale shall also be given to all lienholders on file with the Division. Notice of sale shall be given to the Division in accordance with the procedures established by the Division. Notices required to be given under this subsection shall be mailed at least 10 days prior to the date of sale. A lienholder shall be permitted to purchase the motor vehicle at any such sale by bidding in the amount of its lien, if that should be the highest bid, without being required to tender any additional funds, other than the towing and storage fees. The county board of education, or its agent, shall not sell, give, or otherwise transfer possession of the forfeited motor vehicle to the defendant, the motor vehicle owner who owned the motor vehicle immediately prior to forfeiture, or any person acting on the defendant's or motor vehicle owner's behalf."

Section 12. G.S. 47-108.11 reads as rewritten:

"§ 47-108.11. *Validation of recorded instruments where seals have been omitted.*

In all cases of any deed, deed of trust, mortgage, lien or other instrument authorized or required to be registered in the office of the register of deeds of any county in this State where it appears of record or it appears that from said instrument, as recorded in the office of the register of deeds of any county in the State, there has been omitted from said recorded or registered instrument the word "seal," "notarial seal" and that any of said recorded or registered instruments shows or recites that the grantor or grantors "have hereunto fixed or set their hands and seals" and the signature of the grantor or grantors appears without a seal thereafter or on the recorded or registered instrument or in all cases where it appears there is an attesting clause which recites "signed, sealed and delivered in the presence of," and the signature of the grantor or grantors appears on the recorded or registered instrument without any seal appearing thereafter or of record, then all such deeds, mortgages, deeds of trust, liens or other instruments, and the registration of same in the office of the register of deeds, are hereby declared to be in all respects valid and binding and are hereby made in all respects valid and binding to the same extent as if the word "seal" or "notarial seal" had not been omitted, and the registration and recording of such instruments in the office of

the register of deeds in any county in this State are hereby declared to be valid, proper, legal and binding registrations.

This section shall not apply in any respect to any instrument recorded or registered subsequent to ~~January 1, 1995~~ January 1, 1999, or to pending litigation or to any such instruments now directly or indirectly involved in pending litigation."

Section 13. G.S. 50-13.4(f)(7) reads as rewritten:

"(7) A minor child or other person for whose benefit an order for the payment of child support has been entered shall be a creditor within the meaning of Article 3 3A of Chapter 39 of the General Statutes pertaining to fraudulent conveyances."

Section 14. G.S. 50-16.7(h) reads as rewritten:

"(h) A dependent spouse for whose benefit an order for the payment of alimony or postseparation support has been entered shall be a creditor within the meaning of Article 3 3A of Chapter 39 of the General Statutes pertaining to fraudulent conveyances."

Section 15.(a) The catchline of G.S. 58-3-176, as enacted by S.L. 1999-231, reads as rewritten:

~~"§ 58-3-176. § 58-3-178. Coverage for prescription contraceptive drugs or devices and for outpatient contraceptive services; exemption for religious employers."~~

Section 15.(b) Section 2 of S.L. 1999-231 is repealed.

Section 15.(c) The prefatory language of Section 2.1 of S.L. 1999-231 reads as rewritten:

~~"Section 2.1. If House Bill 314, 1999 Regular Session, becomes law, then Section 2 of this act is repealed and effective January 1, 2000, G.S. 58-50-155(a) as rewritten by Section 2 of House Bill 314, 1999 Regular Session S.L. 1999-197 is amended by adding a new subdivision to read:"~~

Section 15.(d) G.S. 58-50-155(a)(5), as enacted by Section 2.1 of S.L. 1999-231, reads as rewritten:

"(5) Prescribed contraceptive drugs or devices that prevent pregnancy and that are approved by the United States Food and Drug Administration for use as contraceptives, or outpatient contraceptive services at least equal to the coverage required by G.S. ~~58-3-174, 58-3-178~~, if the plan covers prescription drugs or devices, or outpatient services, as applicable. The same exceptions and exclusions as are provided under G.S. ~~58-3-174 58-3-178~~ apply to standard plans developed and approved under G.S. 58-50-125."

Section 16. If ratified Senate Bill 594 becomes law, then G.S. 58-3-167(b), as enacted by Section 5 of that act, reads as rewritten:

"(b) Whenever a law is enacted by the General Assembly on or after the effective date of this section that applies to a health benefit plan, the term 'health benefit plan' shall be defined for purposes of that law as provided in subsection (a) of this section unless that law provides a different definition or otherwise expressly provides that the definition in this section is not applicable."

Section 17. G.S. 62-159(a) reads as rewritten:

"(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may provide funding through appropriations from the General Assembly or the proceeds of general obligation bonds as provided in this section to either (i) an existing natural gas local distribution company or (ii) ~~a person or a gas district awarded a new franchise company;~~ (ii) a person awarded a new franchise; or (iii) a gas district for the construction of natural gas facilities that it otherwise would not be economically feasible for the company, person, or gas district to construct."

Section 18. G.S. 62A-25(d) reads as rewritten:

"(d) In no event shall any invoice for reimbursement be approved for payment of costs of any CMRS provider exceeding one hundred twenty-five percent (125%) of the service charges remitted by such CMRS provider unless prior approval for such expenditures is received from the Board. If the total amount of invoices submitted to the Board and approved for payment exceeds the amount in the Wireless Fund in any month, CMRS providers that have invoices approved for payment shall receive a pro rata share of the Wireless Fund, based on the relative amount of their approved invoices available that month, and the balance of the payments will be carried over to the following month or months and shall include interest at ~~the rate set out in G.S. 24-1~~ a rate equal to the rate earned by the Wireless Fund until all of the approved payments are made."

Section 19. G.S. 74C-5 reads as rewritten:

"§ 74C-5. Powers of the Board.

In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

- (1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;
- (2) Determine minimum qualifications, establish and require written or oral examinations, and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;
- (3) Conduct investigations regarding alleged violations and to make evaluations as may be necessary to determine if licensees and trainees under this Chapter are complying with the provisions of this Chapter;
- (4) Adopt and amend bylaws, consistent with law, for its internal management and control;
- (5) Approve individual applicants to be licensed or registered according to this Chapter;
- (6) Deny, suspend, or revoke any license or trainee permit issued or to be issued under this Chapter to any applicant, licensee, or permit holder who fails to satisfy the requirements of this Chapter or the rules established by the

Board. The denial, suspension, or revocation shall be in accordance with Chapter 150B of the General Statutes of North Carolina;

- (7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. ~~[Chapter]~~ Chapter 5A, Article 2, for acts occurring in matters pending before the Private Protective Services Board which would constitute civil contempt if the acts occurred in an action pending in court; ~~and~~
- (8) Repealed by Session Laws 1989, c. 759, s. 5.
- (9) Establish rules governing detection of deception schools, and charge fees for reimbursement of costs incurred pursuant to approval of such ~~schools,~~ schools; and
- (10) Contract for services as necessary to carry out the functions of the Board."

Section 20. G.S. 74C-6 reads as rewritten:

"§ 74C-6. *Position of Administrator created.*

The position of Administrator of the Private Protective Services Board is hereby created within the ~~State Bureau of Investigation, Department of Justice.~~ The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the private protective services industry to ensure compliance with the law in all aspects."

Section 21. G.S. 74D-5(a) reads as rewritten:

"(a) In addition to the powers conferred upon the Board elsewhere in this Chapter, the Board shall have the power to:

- (1) Promulgate rules necessary to carry out and administer the provisions of this Chapter including the authority to require the submission of reports and information by licensees under this Chapter;
- (2) Determine minimum qualifications and establish minimum education, experience, and training standards for applicants and licensees under this Chapter;
- (3) Conduct investigations regarding alleged violations and make evaluations as may be necessary to determine if licensees and registrants under this Chapter are complying with the provisions of this Chapter;
- (4) Adopt and amend bylaws, consistent with law, for its internal management and control;
- (5) Investigate and approve individual applicants to be licensed or registered according this Chapter;
- (6) Deny, suspend, or revoke any license issued or to be issued under this Chapter to any applicant or licensee who fails to satisfy the requirements of this Chapter or the rules

established by the Board. The denial, suspension, or revocation of such license shall be in accordance with Chapter 150B of this General Statutes of North Carolina;

- (7) Issue subpoenas to compel the attendance of witnesses and the production of pertinent books, accounts, records, and documents. The district court shall have the power to impose punishment pursuant to G.S. 5A-21 et seq. for acts occurring in matters pending before the Board which would constitute civil contempt if the acts occurred in an action pending in ~~court.~~ court; and
- (8) Contract for services as necessary to carry out the functions of the Board."

Section 22. G.S. 74D-5.1 reads as rewritten:

"§ 74D-5.1. *Position of Administrator created.*

The position of Administrator of the Alarm Systems Licensing Board is hereby created within the ~~State Bureau of Investigation, Department of Justice.~~ The Attorney General shall appoint a person to fill this full-time position. The Administrator's duties shall be to administer the directives contained in this Chapter and the rules promulgated by the Board to implement this Chapter and to carry out the administrative duties incident to the functioning of the Board in order to actively police the alarm systems industry to insure compliance with the law in all aspects. The Administrator may issue a temporary grant or denial of a request for registration subject to final action by the Board at its next regularly scheduled meeting."

Section 23. Effective October 1, 1999, G.S. 85B-3.1(a), as enacted by Section 2 of S.L. 1999-142, reads as rewritten:

"(a) The Commission shall have the following powers and duties:

- (1) To receive and act upon applications for licenses.
- (2) To issue licenses.
- (3) To deny, suspend, and revoke licenses pursuant to G.S. 85B-8.
- (3) ~~To adopt rules for auctioneers and auctions that are consistent with the provisions of this Chapter and the General Statutes.~~
- (4) To issue declaratory rulings.
- (5) To adopt rules for auctioneers and auctions that are consistent with the provisions of this Chapter and the General Statutes."

Section 24. G.S. 90-113.31, as rewritten by Section 1 of S.L. 1999-164, reads as rewritten:

"§ 90-113.31. *Definitions.*

The following definitions shall apply in this Article:

- (1) Board. -- The North Carolina Substance Abuse Professional Certification Board.
- (1a) Certified clinical addictions specialist. -- A person certified by the Board to practice as a clinical addictions specialist in accordance with the provisions of this Article.

- (1b) Certified clinical supervisor. -- A person certified by the Board to practice as a clinical supervisor in accordance with the provisions of this Article.
- (1c) Certified residential facility director. -- A person certified by the Board to practice as a residential facility director in accordance with the provisions of this Article.
- (2) Certified substance abuse counselor. -- A person certified by the Board to practice as a substance abuse counselor in accordance with the provisions of this Article.
- (3) Repealed by S.L. 1997-492, s. 2.
- ~~(4)~~ (3a) Certified substance abuse prevention consultant. -- A person certified by the Board to practice substance abuse prevention in accordance with the provisions of this Article.
- (4) Clinical supervisor intern. -- A person designated by the Board to practice as a clinical supervisor intern for a period not to exceed three years without a showing of good cause in accordance with the provisions of this Article.
- (4a) Credentialing body. -- A board that licenses, certifies, or regulates a profession or practice.
- (4b) Deemed status. -- Recognition by the Board of the credentials offered by a professional discipline whereby the individuals certified, licensed, or otherwise recognized by the discipline as having met the standards of a substance abuse specialist may apply individually for certification as a certified clinical addictions specialist.
- (4c) Human services field. -- An area of study that focuses on the biological, psychological, and social aspects of human beings.
- (5) Prevention. -- The reduction, delay, or avoidance of alcohol and of other drug use behavior. "Prevention" includes the promotion of positive environments and individual strengths that contribute to personal health and well-being over an entire life and the development of strategies that encourage individuals, families, and communities to take part in assessing and changing their lifestyle and environments.
- (6) Professional discipline. -- A field of study characterized by the technical, educational, and ethical standards of a profession.
- (7) Substance abuse counseling. -- The assessment, evaluation, and provision of counseling to persons suffering from substance, drug, or alcohol abuse or dependency.
- (7a) Substance abuse counselor intern. -- A person who successfully completes 300 hours of Board approved supervised practical training and a written examination in pursuit of certification as a substance abuse counselor.
- (8) Substance abuse professional. -- A certified substance abuse counselor, certified substance abuse prevention consultant, certified clinical supervisor, certified clinical

addictions specialist, or certified residential facility director."

Section 25. Effective July 1, 2000, Article 9G of Chapter 90 of the General Statutes, as enacted by S.L. 1999-245, is amended by adding a new section to read:

"§ 90-171.94. Applicability of compact."

This Article is applicable only to nurses whose home states are determined by the North Carolina Board of Nursing to have licensure requirements that are substantially equivalent or more stringent than those of North Carolina."

Section 26. If Senate Bill 55, 1999 Regular Session, becomes law, then the catchline of G.S. 105-37.1, as amended by Senate Bill 55, reads as rewritten:

"§ 105-37.1. (~~Effective July 1, 1999~~) Dances, athletic events, shows, exhibitions, and other entertainments."

Section 27. G.S. 113-270.1A(d) reads as rewritten:

"(d) Nothing in this section shall be construed to prohibit the sale of lifetime licenses as provided in G.S. 113-270.2(c)(1a), G.S. 113-270.1D(b) or G.S. 113-270.2(c)(2). Pending satisfactory completion of the hunter safety course, persons who possess such licenses may exercise the privileges thereof when accompanied by an adult at least 21 years of age who is licensed to hunt in this State. For the purpose of this section, "accompanied" is defined as being able to take immediate control of the hunting device."

Section 28. G.S. 113-271(a) reads as rewritten:

"(a) All the hook-and-line fishing licenses set forth in subsection (b) of this section entitle the holder to fish with hook and line in the inland and joint waters of the State, but not in public mountain trout waters. The licenses set forth in subdivisions (1), (3), (7), and (9) of subsection (d) of this section further entitle the holder to fish with hook and line in public mountain trout waters."

Section 29. G.S. 113-276(e) reads as rewritten:

"(e) A resident individual fishing with hook and line in the county of his residence using natural bait is exempt from the hook-and-line fishing-license requirements of G.S. 113-271, G.S. 113-270.1B(a). "Natural bait" is bait which may be beneficially digested by fish. Where a municipality is bounded by a boundary river or stream, residents of the county in which the municipality is located may fish in the boundary river or stream from those banks of such river or stream in any adjoining county lying directly opposite to the banks of the municipality in question and be deemed fishing within their county for the purposes of the exemption contained in this subsection. The same is deemed true of fishing from the banks of any island in the boundary river or stream within the area opposite the banks of the municipality or municipalities. For the purposes of this section, a boundary river or stream is such portion of a river or stream which either forms a county boundary line or follows the course of such a line. Such line may follow the middle, thread, some former channel, the edge, or some other course in, along, under, or touching the waters of such

river or stream so long as the course of the river or stream substantially represents or follows the course of such boundary line."

Section 30. G.S. 113-276(j) reads as rewritten:

"(j) A migrant farm worker who has in his possession a temporary certification of his status as such by the Rural Employment Service of the North Carolina Employment Security Commission on a form provided by the Wildlife Resources Commission is entitled to the privileges of a resident of the State and of the county indicated on such certification during the term thereof for the purposes of:

(1) Purchasing and using the resident fishing licenses provided by ~~G.S. 113-271(d)(2a), (3), and (4);~~ G.S. 113-271(d)(2), (4), and (6)a.; and

(2) Utilizing the natural-bait exemption in subsection (e) above."

Section 31. G.S. 113-276.2(a) reads as rewritten:

"(a) This section applies to the administrative control of:

(1) Persons, other than individual hunters and fishermen taking wildlife as sportsmen, holding permits under this Article;

(2) Individuals holding special device licenses under ~~G.S. 113-272.2(c)(1) and (2);~~ G.S. 113-272.2(c)(1), (1a), (2), and (2a);

(3) Individuals holding collection licenses under G.S. 113-272.4;

(4) Individuals holding captivity licenses under G.S. 113-272.5; and

(5) Persons holding dealer licenses under G.S. 113-273."

Section 32. G.S. 113-291.4A(a) reads as rewritten:

"(a) There is an open season for the taking of foxes with firearms in all areas of the State east of Interstate Highway 77 and in Mitchell and Caldwell Counties from the beginning of the season established by the Wildlife Resources Commission for the taking of rabbits and quail through January 1 of each year. The selling, buying, or possessing for sale of any fox or fox part taken pursuant to this subsection is prohibited, and is punishable as provided by ~~G.S. 113-294(a) or (k);~~ G.S. 113-294(a) or (j)."

Section 33.(a) G.S. 14-34.3(b)(1) reads as rewritten:

"(1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms or weapons, civil officers of the United States while in the discharge of their official duties, officers and soldiers of the militia ~~and the State guard~~ when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;"

Section 33.(b) G.S. 14-409(b) reads as rewritten:

"(b) It shall be unlawful for any person, firm or corporation to manufacture, sell, give away, dispose of, use or possess machine guns, submachine guns, or other like weapons as defined by

subsection (a) of this section: Provided, however, that this subsection shall not apply to the following:

Banks, merchants, and recognized business establishments for use in their respective places of business, who shall first apply to and receive from the sheriff of the county in which said business is located, a permit to possess the said weapons for the purpose of defending the said business; officers and soldiers of the United States Army, when in discharge of their official duties, officers and soldiers of the militia ~~and the State guard~~ when called into actual service, officers of the State, or of any county, city or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties; the manufacture, use or possession of such weapons for scientific or experimental purposes when such manufacture, use or possession is lawful under federal laws and the weapon is registered with a federal agency, and when a permit to manufacture, use or possess the weapon is issued by the sheriff of the county in which the weapon is located. Provided, further, that any bona fide resident of this State who now owns a machine gun used in former wars, as a relic or souvenir, may retain and keep same as his or her property without violating the provisions of this section upon his reporting said ownership to the sheriff of the county in which said person lives."

Section 33.(c) G.S. 97-2(2), as rewritten by Section 1 of Senate Bill 877, 1999 Regular Session, reads as rewritten:

"(2) Employee. -- The term 'employee' means every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including aliens, and also minors, whether lawfully or unlawfully employed, but excluding persons whose employment is both casual and not in the course of the trade, business, profession or occupation of his employer, and as relating to those so employed by the State, the term 'employee' shall include all officers and employees of the State, including such as are elected by the people, or by the General Assembly, or appointed by the Governor to serve on a per diem, part-time or fee basis, either with or without the confirmation of the Senate; as relating to municipal corporations and political subdivisions of the State, the term 'employee' shall include all officers and employees thereof, including such as are elected by the people. The term 'employee' shall include members of the North Carolina national guard while on State active duty under orders of the Governor and members of the North Carolina State ~~guard~~ Defense Militia while on State active duty under orders of the Governor. The term 'employee' shall include deputy sheriffs and all persons acting in the capacity of deputy sheriffs, whether appointed by the sheriff or by the governing body of the county and whether

serving on a fee basis or on a salary basis, or whether deputy sheriffs serving upon a full-time basis or a part-time basis, and including deputy sheriffs appointed to serve in an emergency, but as to those so appointed, only during the continuation of the emergency. The sheriff shall furnish to the board of county commissioners a complete list of all deputy sheriffs named or appointed by him immediately after their appointment, and notify the board of commissioners of any changes made therein promptly after such changes are made. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents, and other persons to whom compensation may be payable: Provided, further, that any employee as herein defined of a municipality, county, or of the State of North Carolina while engaged in the discharge of his official duty outside the jurisdictional or territorial limits of the municipality, county, or the State of North Carolina and while acting pursuant to authorization or instruction from any superior officer, shall have the same rights under this Article as if such duty or activity were performed within the territorial boundary limits of his employer.

Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation shall be considered as an employee of such corporation under this Article.

Any such executive officer of a corporation may, notwithstanding any other provision of this Article, be exempt from the coverage of the corporation's insurance contract by such corporation specifically excluding such executive officer in such contract of insurance and the exclusion to remove such executive officer from the coverage shall continue for the period such contract of insurance is in effect, and during such period such executive officers thus exempted from the coverage of the insurance contract shall not be employees of such corporation under this Article.

All county agricultural extension service employees who do not receive official federal appointments as employees of the United States Department of Agriculture and who are field faculty members with professional rank as designated in the memorandum of understanding between the North Carolina Agricultural Extension Service, North Carolina State University, A & T State University and the boards of county commissioners shall be deemed to be employees of the State of North Carolina. All other county agricultural extension service employees paid from State or county funds shall be deemed to be employees of the county board

of commissioners in the county in which the employee is employed for purposes of workers' compensation.

The term employee shall also include members of the Civil Air Patrol currently certified pursuant to G.S. 143B-491(a) when performing duties in the course and scope of a State approved mission pursuant to Article 11 of Chapter 143B.

Employee shall not include any person performing voluntary service as a ski patrolman who receives no compensation for such services other than meals or lodging or the use of ski tow or ski lift facilities or any combination thereof.

Any sole proprietor or partner of a business or any member of a limited liability company may elect to be included as an employee under the workers' compensation coverage of such business if he is actively engaged in the operation of the business and if the insurer is notified of his election to be so included. Any such sole proprietor or partner or member of a limited liability company shall, upon such election, be entitled to employee benefits and be subject to employee responsibilities prescribed in this Article."

Section 33.(d) G.S. 97-29 reads as rewritten:

"§ 97-29. *Compensation rates for total incapacity.*

Except as hereinafter otherwise provided, where the incapacity for work resulting from the injury is total, the employer shall pay or cause to be paid, as hereinafter provided, to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages, but not more than the amount established annually to be effective October 1 as provided herein, nor less than thirty dollars (\$30.00) per week.

In cases of total and permanent disability, compensation, including medical compensation, shall be paid for by the employer during the lifetime of the injured employee. If death results from the injury then the employer shall pay compensation in accordance with the provisions of G.S. 97-38.

The weekly compensation payment for members of the North Carolina national guard and the North Carolina State Defense Militia ~~guard~~ shall be the maximum amount established annually in accordance with the last paragraph of this section per week as fixed herein. The weekly compensation payment for deputy sheriffs, or those acting in the capacity of deputy sheriffs, who serve upon a fee basis, shall be thirty dollars (\$30.00) a week as fixed herein.

An officer or member of the State Highway Patrol shall not be awarded any weekly compensation under the provisions of this section for the first two years of any incapacity resulting from an injury by accident arising out of and in the course of the performance by him of his official duties if, during such incapacity, he continues to be an officer or member of the State Highway Patrol, but he shall be

awarded any other benefits to which he may be entitled under the provisions of this Article.

Notwithstanding any other provision of this Article, on July 1 of each year, a maximum weekly benefit amount shall be computed. The amount of this maximum weekly benefit shall be derived by obtaining the average weekly insured wage in accordance with G.S. 96-8(22), by multiplying such average weekly insured wage by 1.10, and by rounding such figure to its nearest multiple of two dollars (\$2.00), and this said maximum weekly benefit shall be applicable to all injuries and claims arising on and after January 1 following such computation. Such maximum weekly benefit shall apply to all provisions of this Chapter and shall be adjusted July 1 and effective January 1 of each year as herein provided."

Section 33.(e) G.S. 115C-254 reads as rewritten:

"§ 115C-254. Use of school buses by State ~~guard~~ militia or national guard.

When requested to do so by the Governor, the board of education of any local school administrative unit is authorized and directed to furnish a sufficient number of school buses to the North Carolina State ~~guard~~ Defense Militia or the national guard for the purpose of transporting members of the State ~~guard~~ militia ~~or~~ members of the national guard to and from authorized places of encampment, or to and from places to which members of the State ~~guard~~ militia or members of the national guard are ordered to proceed for the purpose of suppressing riots or insurrections, repelling invasions or dealing with any other emergency. Public school buses so furnished by any local school administrative unit to the North Carolina State ~~guard~~ Defense Militia or the national guard shall be operated by members or employees of the State militia or national guard, and all expense of such operation, including any repair or replacement of any bus occasioned by such operation, shall be paid by the State from the appropriations available for the use of the State ~~guard~~ militia or the national guard."

Section 33.(f) G.S. 147-33.2(8)d. reads as rewritten:

"d. Whenever it should be certified by the Adjutant General of the State that emergency conditions require such procedure, the Governor, with the approval of the Council of State, shall have the power to call up and mobilize State ~~militia in addition to the existing units of the State guard; militia;~~ to provide transportation and facilities for mobilization and full utilization of the State ~~guard, or other units of~~ militia, in such emergency; and to allocate from the Contingency and Emergency Fund such amounts as may be necessary for such purposes during the period of such emergency;"

Section 34. G.S. 115C-325(c) is amended by adding a new subdivision to read:

...

- "(5) Consecutive Years of Service. -- If a probationary teacher in a full-time permanent position does not work for at least 120 workdays in a school year because the teacher is on sick leave, disability leave, or both, that school year shall not be deemed to constitute (i) a consecutive year of service for the teacher or (ii) a break in the continuity in consecutive years of service for the teacher."

Section 35. Effective July 1, 2000, G.S. 115C-47(32a), as rewritten by S.L. 1999-237, reads as rewritten:

"§ 115C-47. *Powers and duties generally.*

In addition to the powers and duties designated in G.S. 115C-36, local boards of education shall have the power or duty:

- (32a) To Establish Alternative Learning Programs and Develop Policies and Guidelines. -- Each local board of education shall establish at least one alternative learning programs program and shall adopt guidelines for assigning students to alternative learning programs. These guidelines shall include (i) a description of the programs and services to be provided, (ii) a process for ensuring that an assignment is appropriate for the student and that the student's parents are involved in the decision, and (iii) strategies for providing alternative learning programs, when feasible and appropriate, for students who are subject to long-term suspension or expulsion. In developing these guidelines, local boards shall consider the State Board's policies and guidelines developed under G.S. 115C-12(24). Upon adoption of policies and guidelines under this subdivision, local boards are encouraged to incorporate them in their safe school plans developed under G.S. 115C-105.47.

The General Assembly urges local boards to adopt policies that prohibit superintendents from assigning to any alternative learning program any professional public school employee who has received within the last three years a rating on a formal evaluation that is less than above standard."

Section 36. G.S. 122C-251(h), as rewritten by S.L. 1999-201, reads as rewritten:

"(h) The cost and expenses of transporting a respondent to or from a 24-hour facility is the responsibility of the county of residence of the respondent. The State (when providing transportation under G.S. 122C-408(b)), a city, or a county is entitled to recover the reasonable cost of transportation from the county of residence of the respondent. The county of residence of the respondent shall reimburse the State, another county, or a city the reasonable transportation costs incurred as authorized by this subsection. The county of residence of the respondent is entitled to recover the reasonable cost of transportation it has paid to the State, a city, or a county. Provided that the county of residence provides the respondent or other individual liable for the

respondent's support ~~is provided~~ a reasonable notice and opportunity to object to the ~~reimbursement.~~ The reimbursement, the county of residence of the respondent may recover that cost from:

- (1) The respondent, if the respondent is not indigent;
- (2) Any person or entity that is legally liable for the resident's support and maintenance provided there is sufficient property to pay the cost;
- (3) Any person or entity that is contractually responsible for the cost; or
- (4) Any person or entity that otherwise is liable under federal, State, or local law for the cost."

Section 37. G.S. 128-21(11), as rewritten by Section 2 of S.L. 1999-167, reads as rewritten:

- "(11) "Employer" shall mean any county, incorporated city or town, the board of alcoholic control of any county or incorporated city or town, the North Carolina League of Municipalities, and the State Association of County Commissioners. "Employer" shall also mean any separate, juristic political subdivision of the State as may be approved by the Board of Trustees upon the advice of the Attorney General. "Employer" also means any fire department that serves a city or county or any part of a city or county and that is supported in whole or in part by municipal or county funds."

Section 38. G.S. 146-32, as amended by S.L. 1999-252, reads as rewritten:

"§ 146-32. *Exemptions as to leases, etc.*

The Governor, acting with the approval of the Council of State, may adopt rules and ~~regulations.~~ regulations:

- (1) Exempting from any or all of the requirements of this Subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and
- (2) Authorizing any State agency to enter into and/or approve those classes of transactions exempted by such rules and regulations from the requirements of this Chapter.
- (3) No rule or regulation adopted under this section may exempt from the provisions of G.S. 146-25.1 any class of lease or rental which has a duration of more than 21 days, unless the class of lease or rental:
 - a. Is a lease or rental necessitated by a fire, flood, or other disaster that forces the agency seeking the new lease or rental to cease use of real property;
 - b. Is a lease or rental necessitated because an agency had intended to move to new or renovated real property that was not completed when planned, but a lease or rental exempted under this subparagraph may not be for a period of more than six months; or

- c. Is a lease or rental which requires a unique location or a location that adjoins or is in close proximity to an existing rental location."

Section 39. G.S. 143-135.9 is amended by adding the following new subsection (d):

"(d) Any county, city, town or subdivision of the State may acquire information technology pursuant to this section."

Section 40. G.S. 143-138 is amended by adding a new subsection to read:

"(j1) A nonbusiness occupancy building built prior to the adoption of the 1953 Building Code that is not in compliance with Section 402.1.3.5 of Volume IX of the Building Code or Section 3407.2.2 of Volume I of the Building Code must comply with the applicable sections by December 31, 2006."

Section 41. If Senate Bill 1149, 1999 Regular Session, becomes law, then Section 6 of Senate Bill 1149 is repealed.

Section 42. G.S. 143B-426.24(j) reads as rewritten:

"(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. ~~Any assets of such investment vehicles or trusts shall remain solely the property and rights of the State subject only to the claims of the State's general creditors. All assets of the Plan, including all deferred amounts, property and rights purchased with deferred amounts, and all income attributed thereto shall be held in trust for the exclusive benefit of the Plan participants and their beneficiaries.~~"

Section 43. G.S. 162A-5(a) reads as rewritten:

"(a) Each authority organized under this Article shall consist of the number of members as may be agreed upon by the participating political ~~subdivision~~, subdivisions, such members to be selected by the respective political subdivision. A proportionate number (as nearly as can be) of members of the authority first appointed shall have terms expiring one year, two years and three years respectively from the date on which the creation of the authority becomes effective. Successor members and members appointed by a political subdivision subsequently joining the authority shall each be appointed for a term of three years, but any person appointed to fill the vacancy shall be appointed to serve only for the unexpired term and any member may be reappointed; provided, however, that a political subdivision subsequently joining an authority created under G.S. 162A-3.1 shall not have the right to appoint any members to such authority. Appointments of successor members shall, in each instance, be made by the governing body of the political subdivision appointing the member whose successor is to be appointed. Any member of the authority may be removed, with or without cause, by the governing

body appointing said member. This subsection does not apply in the case of an authority that a city joins under G.S. 162A-5.1."

Section 44. G.S. 168A-3(10)a.6., as rewritten by S.L. 1999-160, reads as rewritten:

"6. Make physical changes to accommodate a person with a disability where:

- I. For a new employee the cost of such changes would exceed five percent (5%) of the annual salary or annualized hourly wage for the job in question; or
- II. For an existing employee the cost of the changes would bring the total cost of physical changes made to accommodate the employee's ~~handicapping~~ disabling conditions since the beginning of the employee's employment with the employer to greater than five percent (5%) of the employee's current salary or current annualized hourly wage; or"

Section 45. Section 2 of S.L. 1999-55 is amended by deleting "94.6" and substituting "Sec. 94.6".

Section 46. Section 1 of S.L. 1999-99 reads as rewritten:

"Section 1. Section 7.109 of the Charter of the City of Charlotte, being Chapter 713 of the 1965 Session Laws, as added by Chapter 55 of the 1981 Session Laws and as amended by Chapter 346 of the 1985 Session Laws, reads as rewritten:

'Sec. 7.109. ~~Uptown~~ Public-private development projects.

(a) Definition. In this Article, '~~uptown~~ public-private development projects' means a capital project located: (i) in the city's central business district, as defined by the city council; (ii) in or along a major transportation corridor; or (iii) in a development zone designated pursuant to G.S. 105-129.3A; comprising one or more buildings or other improvements and including both public and private facilities. By way of illustration but not limitation, such a project might include a single building comprising a publicly owned parking structure and publicly owned convention center and a privately owned hotel or office building.

(b) Authorization. If the city council finds that it is likely to ~~have a significant effect on the revitalization of the central business district,~~ be of significant economic benefit to the area of the city in which the project is located, the city may acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of ~~an uptown~~ a public-private development project or of specific facilities within such a project. The city may enter into binding contracts with one or more private developers with respect to acquiring, constructing, owning, or operating such a project. Such a contract shall among other provisions, specify the following:

- (1) The property interest of both the city and the developer or developers in the project.

- (2) The responsibilities of the city and the developer or developers for construction of the project.
- (3) The responsibilities of the city and the developer or developers with respect to financing the project.
- (4) The responsibilities of the city and the developer or developers with respect to the operation of the project.

Such a contract may be entered into before the acquisition of any real property necessary to the project.

(c) Property acquisition. ~~An uptown~~ A public-private development project may be constructed on property acquired by the developer or developers or on property directly acquired by the city by any means.

(d) Property disposition. In connection with ~~an uptown~~ a public-private development project, the city may lease or convey interests in property owned by it, including air rights over public facilities, by private negotiation or sale, and Article 12 of Chapter 160A of the General Statutes does not apply to such dispositions.

(e) Construction of the project. The contract between the city and the developer or developers may provide that the developer or developers shall be responsible for construction of the entire ~~uptown~~ public-private development project. If so, the contract shall include such provisions as the city council deems sufficient to assure that the public facility or facilities included in the project meet the needs of the city and are constructed at a reasonable price. A project constructed pursuant to this paragraph is not subject to Article 8 of Chapter 143 of the General Statutes. Statutes as long as city funds constitute not more than fifty percent (50%) of the total costs of the project.

(f) Operation. The city may contract for the operation of any public facility or facilities included in ~~an uptown~~ a public-private development project by a person, partnership, firm, or corporation, public or private. Such a contract shall include provisions sufficient to assure that any such facility or facilities are operated for the benefit of the citizens of the city.

(g) Grant funds. To assist in the financing of its share of ~~an uptown~~ a public-private development project, the city may apply for, accept and expend grant funds from the federal or State governments."

Section 47.(a) Effective December 1, 1999, G.S. 8-45.1(b), as enacted by S.L. 1999-131, reads as rewritten:

"(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. ~~The provisions shall not apply to magnetic tape, CD-R, or CD-RW.~~ Nonerasable, computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department."

Section 47.(b) Effective December 1, 1999, G.S. 8-45.3(b), as enacted by S.L. 1999-131, reads as rewritten:

"(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. ~~The provisions shall not apply to magnetic tape, CD-R, or CD-RW.~~ Nonerasable, computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department."

Section 47.(c) Effective December 1, 1999, G.S. 8-34(b), as enacted by S.L. 1999-131, reads as rewritten:

"(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. ~~The provisions shall not apply to magnetic tape, CD-R, or CD-RW.~~ Nonerasable, computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department."

Section 47.(d) Effective December 1, 1999, G.S. 153A-436(f), as enacted by S.L. 1999-131, reads as rewritten:

"(f) The provisions of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. ~~The provisions shall not apply to magnetic tape, CD-R, or CD-RW.~~ Nonerasable, computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department."

Section 47.(e) Effective December 1, 1999, G.S. 160A-490(b), as enacted by S.L. 1999-131, reads as rewritten:

"(b) The provisions of subsection (a) of this section shall apply to records stored on any form of permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. ~~The provisions shall not apply to magnetic tape, CD-R, or CD-RW.~~ Nonerasable, computer-readable storage media shall not be used for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records as provided in G.S. 121-5(d), except to the extent expressly approved by the Department of Cultural Resources pursuant to standards and conditions established by the Department."

Section 48.(a) This section is designed to resolve duplicate enactments of the same material by S.L. 1999-181 and S.L. 1999-182. This section does not add any municipalities to the coverage of G.S. 160A-300.1 that were not added separately by one or both of those Session Laws.

Section 48.(b) Section 1 of S.L. 1999-182 is repealed.

Section 48.(c) Section 2 of S.L. 1997-216, as amended by S.L. 1999-17 and S.L. 1999-181, reads as rewritten:

"Section 2. This act applies to the Cities of Charlotte, Fayetteville, Greensboro, High Point, ~~and Rocky Mount~~ Rocky Mount, and Wilmington, and the Towns of Cornelius, Huntersville, and Matthews only."

Section 48.(d) Section 2 of S.L. 1999-182 is repealed.

Section 49. Section 1 of S.L. 1999-208 reads as rewritten:

"Section 1. G.S. 160A-58.1(b)(2) shall not apply to the City of Hickory or the Town of Brookford as to any property if the City or Town has entered into an annexation agreement pursuant to Part 6 of Article 4A of Chapter 160A of the General Statutes with the city to which a point on the proposed satellite corporate limits is closer and that agreement states that the other city will not annex the property, except that this modification shall not apply to the boundary agreement between the City of Hickory and the City of Newton dated May 7, 1996. This section shall have no effect on the ability of the City of Hickory to annex property under Part 4 of Article 4A of Chapter 160A of the General Statutes if the property is closer to the Town of Maiden than it is to the City of Hickory."

Section 50. Section 2.2 of S.L. 1999-189 reads as rewritten:

"Section 2.2. G.S. 57C-2-20 reads as rewritten:

§ 57C-2-20. *Formation.*

(a) One or more persons may ~~organize form~~ a limited liability company by delivering executed articles of ~~organization~~ to the Secretary of State for filing.

(b) (1) When the filing by the Secretary of State ~~files of the articles of organization~~, organization becomes effective, the proposed organization becomes a limited liability company subject to this Chapter and to the purposes, conditions, and provisions stated in the articles, ~~and the persons executing the articles of organization become members of the limited liability company.~~ articles of organization.

(2) Filing of the articles of organization by the Secretary of State is conclusive evidence of the ~~organization~~ formation of the limited liability company, except in a proceeding by the State to cancel or revoke the articles of organization or involuntarily dissolve the limited liability company.

(c) If initial members are not identified in the articles of organization of a limited liability company in the manner provided in G.S. 57C-3-01(a), the organizers shall hold one or more meetings at

the call of a majority of the organizers to identify the initial members of the limited liability company. Unless otherwise provided in this Chapter or in the articles of organization of the limited liability company, all decisions to be made by the organizers at such meetings shall require the approval, consent, agreement, or ratification of a majority of the organizers. Unless otherwise provided in the articles of organization, the organizers may, in lieu of a meeting, take action as described in this subsection by written consent signed by all of the organizers. The written consent may be incorporated in, or otherwise made part of, the initial written operating agreement of the limited liability company."

Section 51. G.S. 57C-3-03 reads as rewritten:

"§ 57C-3-03. *Voting of members.*

Except as provided in the articles of organization or a written operating agreement, the affirmative vote, approval, agreement, or consent of all members shall be required to:

- (1) Adopt or amend an operating agreement;
- (2) Admit any person as a member;
- (3) Sell, transfer, or otherwise dispose of all or substantially all of the assets of the limited liability company prior to the dissolution of the limited liability ~~company;~~ company.
- (4) ~~Merge the limited liability company into or with another limited liability company."~~

Section 52.(a) If Senate Bill 835, 1999 Regular Session, becomes law, then G.S. 57C-1-03(3a), as enacted by Senate Bill 835, reads as rewritten:

- "(3a) Business entity. -- A corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation (including a foreign professional corporation as defined in G.S. 55B-16), a domestic or foreign nonprofit corporation as defined in G.S. 55A-1-40, a domestic or foreign limited liability company, a domestic or foreign limited partnership as defined in G.S. 59-102, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State (including a registered limited liability partnership as defined in G.S. 59-32 and any other limited liability partnership formed under a law other than the laws of this ~~State.~~ State)."

Section 52.(b) If Senate Bill 835, 1999 Regular Session, becomes law, then G.S. 57C-9A-08(a)(1), as enacted by Senate Bill 835, reads as rewritten:

- "(1) Each other merging business entity merges into the surviving business entity, and the separate existence of each merging business ~~entity,~~ entity except the surviving business entity ceases;"

Section 53. S.L. 1999-237 is amended by rewriting the two lines above the heading to Section 11.58 to read:

"Requested by: Representatives Earle, Nye, Easterling, Hardaway, Redwine, Boyd-McIntyre, Senators Martin of Guilford, Foxx, Plyler, Perdue, Odom".

Section 54. Section 15.15 of S.L. 1999-237 is amended by designating the existing language as (a) and adding a new subsection to read:

"Section 15.15.(b) If the Director of the Office of State Budget determines that sufficient State funds are available from any source to match federal funds for the detoxification of the Warren County polychlorinated biphenyl (PCB) landfill, consistent with the provisions of Section 29.9 of S.L. 1998-212, the Director may transfer funds not to exceed seven million dollars (\$7,000,000) to the Department of Environment and Natural Resources to be placed in the nonreverting reserve established under Section 29.9(a) of S.L. 1998-212."

Section 55. Section 16.7(c)(10) of S.L. 1999-237 reads as rewritten:

"(10) One representative from the American Lung Association of North Carolina who is a resident of this State, appointed by the President Pro Tempore of the Senate."

Section 56. Section 18.13 of S.L. 1999-237 reads as rewritten:

"Section 18.13. The Department of Correction may use funds available to the Department during the 1999-2001 biennium for payment to claimants as part of the settlement of the Title VII lawsuit over the recruitment, hiring, and promotion of females in the Department. ~~Prior to final settlement of the lawsuit, the~~ The Department shall report on the proposed settlement to the Joint Legislative Commission on Governmental Operations, Operations on the details of the settlement of the lawsuit within 60 days of the court's entry of the final order. The Department shall also report to the Joint Legislative Corrections and Crime Control Oversight Committee, and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety."

Section 57. Notwithstanding the provisions of the Joint Conference Committee Report on the Continuation, Expansion and Capital Budgets, dated June 29, 1999, which was distributed in the House of Representatives and the Senate and used to explain S.L. 1999-237, funds in the amount of two hundred forty thousand dollars (\$240,000) that were appropriated to the State Board of Education for the 1999-2000 fiscal year in S.L. 1999-237 for the school leadership pilot project shall be used by four local school administrative units to participate in the nationwide program of the Center for Leadership in School Reform.

Section 58.(a) For the 1999-2001 biennium, the Department of Health and Human Services shall continue to provide the current office space for the four regional offices of the Governor's Advocacy Council for Persons with Disabilities or office space that is comparable to that now used by the Council.

Section 58.(b) For the 1999-2001 biennium, the Secretary of Administration may use funds from parking revenues that are in

excess of parking system expense requirements to fund the fifteen dollar (\$15.00) per month subsidies for vanpools and transit passes.

Section 59. Whenever any law, public or local, provides a form requiring the user of the form to fill in the last two digits of the year and the number "19" appears as the first two digits of the year, then effective January 1, 2000, those first two digits are deleted from the law.

Section 60. Articles 1 through 11 of Subchapter I of Chapter 7B of the General Statutes, as enacted by Section 6 of S.L. 1998-202, and as amended by Sections 18 through 28 of S.L. 1998-229, become effective July 1, 1999, and apply to abuse, neglect, and dependency reports received, petitions filed, and reviews commenced on and after that date.

Section 61.(a) If Senate Bill 10, 1999 General Assembly, is enacted, then G.S. 131D-7, as enacted by that act, is recodified as "G.S. 131D-8", and all references in Senate Bill 10, as enacted, to "G.S. 131D-7" are rewritten to read "G.S. 131D-8".

Section 61.(b) If Senate Bill 10, 1999 Regular Session, becomes law, then G.S. 14-32.2(e1), as enacted by Section 3.15 of that act, is amended by deleting "health, welfare, or comfort" and substituting "health or welfare".

Section 62. The prefatory language of Section 3 of Ratified House Bill 253, 1999 Regular Session, is rewritten to read:

"Section 3. G.S. 143B-472.41(a)(8) reads as rewritten:".

Section 63. If both House Bill 1072 and Senate Bill 881 of the 1999 Regular Session become law, then G.S. 163-278.23, as amended by Section 5(b) of Senate Bill 881, is amended by deleting the word "opinions" the second time that word appears.

Section 64. If Senate Bill 1115, 1999 Regular Session, becomes law, then G.S. 105-129.3(e)(1), as enacted by that act, is amended by deleting "has is designated", and substituting "is designated".

Section 65. Effective July 1, 1999, Section 16.35(a) of S.L. 1999-237 reads as rewritten:

"Section 16.35.(a) Of the funds appropriated in this act to the Rural Economic Development Center, Inc., the sum of ~~one million four hundred seventy thousand dollars (\$1,470,000)~~ one million four hundred fifty-seven thousand three hundred thirty-eight dollars (\$1,457,338) for the 1999-2000 fiscal year and the sum of ~~one million four hundred seventy thousand dollars (\$1,470,000)~~ one million four hundred fifty-seven thousand three hundred thirty-eight dollars (\$1,457,338) for the 2000-2001 fiscal year shall be allocated as follows:

	1999-2000 FY	2000-2001 FY
Research and Demonstration Grants	\$475,864	\$475,864
Technical Assistance and Center		
Administration of Research		
and Demonstration Grants	444,136	444,136
Center Administration, Oversight,		

and Other Programs	350,000	<u>337,338</u>	350,000	<u>337,338</u>
Administration of Clean Water/ Natural Gas Critical Needs Bond Act of 1998		200,000		200,000."

Section 66. G.S. 58-79-30 is repealed.

Section 67. If Senate Bill 746, 1999 Regular Session, becomes law, then it becomes effective October 1, 1999. G.S. 1-543.12, as enacted by that act, reads as rewritten:

"§ 1-543.12. *Structured settlement payment rights.*

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

- (1) The transfer complies with the requirements of this Article law;
- (2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:
 - a. The amounts and due dates of the structured settlement payments to be transferred;
 - b. The aggregate amount of such payments;
 - c. The discounted present value of such payments;
 - d. The gross amount payable to the payee in exchange for such payments;
 - e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;
 - f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;
 - g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments;
 - h. The discount rate used by the transferee to determine the net amount payable to the payee for the structured settlement payments to be transferred; and
 - i. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;
- (3) The transfer is in the best interest of the payee;

- (4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;
- (5) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority;
- (6) The discount rate used in determining the net amount payable to the payee, as provided in subdivision (2) of this section, does not exceed an annual percentage rate of prime plus five percentage points calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan. For purposes of this subdivision, the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the month in which the transfer agreement is signed by both the payee and the transferee, except when the transfer agreement is signed prior to the first Monday of that month then the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the preceding month;
- (7) Any brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee do not exceed two percent (2%) of the net amount payable to the payee;
- (8) The transfer of structured settlement payment rights is fair and reasonable; and
- (9) Notwithstanding a provision of the structured settlement agreement prohibiting an assignment by the payee, the court may order a transfer of periodic payment rights provided that the court finds that the provisions of this Article are satisfied. *

If the court or responsible administrative authority authorizes the transfer pursuant to this section, the court or responsible administrative authority shall order the structured settlement obligor to execute an acknowledgment of assignment letter on behalf of the transferee for the amount of the structured settlement payment rights to be ~~transferred~~, transferred; provided, however, structured settlement payment rights arising from a claim pursuant to Chapter 97 shall not be authorized."

Section 67.1. If Senate Bill 285, 1999 Regular Session becomes law, then G.S. 20-79.6(b) as amended by Senate Bill 285, 1999 Regular Session, reads as rewritten:

"(b) Superior Court. -- A special plate issued to a resident superior court judge shall bear the letter 'J' followed by a number indicative of the judicial district the judge serves. The number issued to the senior resident superior court judge shall be the numerical designation of the judge's judicial district, as defined in G.S. 7A-41.1(a)(1). If a district has more than one regular resident superior court judge, a special plate for a resident superior court judge of that district shall bear the number issued to the senior resident superior court judge followed by a hyphen and a letter of the alphabet beginning with the letter 'A' to indicate the judge's seniority.

For ~~a set~~ any grouping of districts ~~as defined in G.S. 7A-41.1(a)(2), having the same numerical designation,~~ other than districts where there are two or more resident superior court judges, the number issued to the senior resident superior court judge shall be the number the districts in the set have in common. A special plate issued to the other regular resident superior court judges of the set of districts shall bear the number issued to the senior resident superior court judge followed by a hyphen and a letter of the alphabet beginning with the letter 'A' to indicate the judge's seniority among all of the regular resident superior court judges of the set of districts. The letter assigned to a resident superior court judge will not necessarily correspond with the letter designation of the district the judge serves.

Where there are two or more regular resident superior court judges for the district or set of districts, the registration plate with the letter 'A' shall be issued to the judge who, from among all the regular resident superior court judges of the district or set of districts, has the most continuous service as a regular resident superior court judge; provided if two or more judges are of equal service, the oldest of those judges shall receive the next letter registration plate. Thereafter, registration plates shall be issued based on seniority within the district or set of districts.

A special judge, emergency judge, or retired judge of the superior court shall be issued a special plate bearing the letter 'J' followed by a number designated by the Administrative Office of the Courts with the approval of the Chief Justice of the Supreme Court of North Carolina. The plate for a retired judge shall have the letter 'X' after the designated number to indicate the judge's retired status."

Section 68. If House Bill 1160, 1999 Regular Session, becomes law, then effective 1 October 1999 the next to the last sentence of G.S. 143-215.1C(b)(2), the next to the last sentence of G.S. 143-215.1C(c)(2), and the next to last sentence of G.S. 143-215.10C(h)(2), as enacted by Part VIII of that act, which are identical, are amended by deleting 'of the discharge.' and substituting 'after the notice is published.' in each subdivision.

Section 69. If Senate Bill 953, 1999 Regular Session, becomes law, then effective when that act becomes law Section 13.14 of that act is redesignated as Section 3.14.

Section 70. Section 7 of S.L. 1999-209 reads as rewritten:

"Section 7. The Department of Environment and Natural Resources shall report to the Joint Legislative Commission on Seafood and Aquaculture on the use of funds derived from the sale of licenses and endorsements under Article 14A of Chapter 113 of the General Statutes no later than 1 October ~~1999~~, 2000."

Section 71. Except as otherwise provided herein, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

Became law upon approval of the Governor at 4:07 p.m. on the 13th day of August, 1999.

S.B. 333

SESSION LAW 1999-457

AN ACT RELATING TO THE MEMBERSHIP OF STATUTORILY CREATED DECISION-MAKING OR REGULATORY BOARDS, COMMISSIONS, COUNCILS, AND COMMITTEES; PROVIDING INTENT; PROVIDING POLICY WITH RESPECT TO THE APPOINTMENT OF MEMBERS TO SUCH BODIES TO ENCOURAGE PROPORTIONATE REPRESENTATION OF WOMEN; REQUIRING ANNUAL REPORTS; AND REQUIRING RETENTION OF CERTAIN INFORMATION REGARDING APPLICANTS.

The General Assembly of North Carolina enacts:

Section 1.(a) It is the intent of the General Assembly to recognize the importance of balance in the appointment of both genders to membership on statutorily created decision-making and regulatory boards, commissions, councils, and committees, and to promote that balance through the provisions of this section. Furthermore, the General Assembly recognizes that statutorily created decision-making and regulatory boards, commissions, councils, and committees play a vital role in shaping public policy for North Carolina, and the selection of well-qualified candidates is the paramount obligation of the appointing authority.

Section 1.(b) In appointing members to any statutorily created decision-making or regulatory board, commission, council, or committee of the State, the appointing authority should select, from among the most qualified persons, those persons whose appointment would promote membership on the board, commission, council, or committee that accurately reflects the proportion that each gender represents in the population of the State as a whole or, in the case of a local board, commission, council, or committee, in the population of the area represented by the board, commission, council, or committee, as determined pursuant to the most recent federal

decennial census, unless the law regulating such appointment requires otherwise. If there are multiple appointing authorities for the board, commission, council, or committee, they may consult with each other to accomplish the purposes of this section.

Section 1.(c) Except as provided at the end of this section, each appointing authority described in subsection (b) shall submit a report to the Secretary of State annually by December 1 which discloses the number of appointments made during the preceding year from each gender and the number of appointments of each gender made, expressed both in numerical terms and as a percentage of the total membership of the board, commission, council, or committee. A copy of the report shall be submitted to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate. In addition, each appointing authority shall designate a person responsible for retaining all applications for appointment, who shall ensure that information describing each applicant's gender and qualifications is available for public inspection during reasonable hours. Nothing in this section requires disclosure of an applicant's identity or of any other information made confidential by law. In those cases where a county or a city is the appointing authority, all the reports referred to above shall be filed with the clerk to the board of county commissioners or the city clerk whichever is applicable. Such reports shall be reported annually by December 1 to the governing boards of the respective county or city and to the Secretary of State.

Section 1.(d) This act applies to appointments and reappointments made after the effective date of this act. Nothing in this act shall be construed to require an appointing authority to make an appointment or remove an appointee on the basis of gender.

Section 1.(e) The purpose of this act is to encourage gender equity but is not to direct, mandate, or require such.

Section 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 4:10 p.m. on the 13th day of August, 1999.

H.B. 964

SESSION LAW 1999-458

AN ACT TO REVISE THE MUNICIPAL INCORPORATION
PROCESS SO AS TO PROVIDE MORE SCRUTINY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-163(c) reads as rewritten:

"(c) The petition must include a proposed name for the city, a map of the city, a list of proposed services to be provided by the proposed municipality, the names of three persons to serve as interim governing board, a proposed charter, a statement of the estimated population, assessed valuation, degree of development, population density, and recommendations as to the form of government and manner of

election. The petition must contain a statement that the proposed municipality will have a budget ordinance with an ad valorem tax levy of at least five cents (5¢) on the one hundred dollar (\$100.00) valuation upon all taxable property within its corporate limits. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection, the proposed municipality must propose either to provide police service or to have services provided by contract with a county or another municipality that proposes that the other government be compensated for providing supplemental protection. The proposed municipality may not contain any noncontiguous areas."

Section 2. G.S. 120-167 reads as rewritten:

"§ 120-167. *Additional criteria; population.*

The Commission may not make a positive recommendation unless the proposed municipality has a permanent population of at least 100, 100 and a population density (either permanent or seasonal) of at least 250 persons per square mile."

Section 3. G.S. 120-168 reads as rewritten:

"§ 120-168. *Additional criteria; development.*

~~Except when the entire proposed municipality is within two miles of the Atlantic Ocean, Albemarle Sound, or Pamlico Sound, the~~ The Commission may not make a positive recommendation unless forty percent (40%) of the area is developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space under the provisions of a zoning ordinance, subdivision ordinance, conditional or special use permit, or recorded restrictive covenants."

Section 4. G.S. 120-169.1 reads as rewritten:

"§ 120-169.1. *Additional criteria; level of development, ~~services~~ services; financial impact on other local governments.*

(a) ~~Level of Development.~~ -- ~~The Commission may not make a positive recommendation unless the entire area proposed for incorporation meets the applicable criteria for development under G.S. 160A-36(c) or G.S. 160A-48(c).~~

(b) ~~Services.~~ -- The Commission may not make a positive recommendation unless the area to be incorporated submits a plan for providing a reasonable level of municipal services. This plan shall be based on the proposed services stated in the petition under G.S. 120-163(c). To meet the requirements of this subsection, the persons submitting the plan for incorporation must propose to provide at least two of the following services:

- (1) ~~Police protection.~~
- (2) ~~Fire protection.~~
- (3) ~~Garbage and refuse collection or disposal.~~

- (4) ~~Water distribution.~~
- (5) ~~Sewer collection or disposal.~~
- (6) ~~Street maintenance, construction, or right-of-way acquisition.~~
- (7) ~~Street lighting.~~
- (8) ~~Adoption of citywide planning and zoning.~~

(c) The Commission in its report shall indicate the impact on other municipalities and counties of diversion of already levied local taxes or State-shared revenues from existing local governments to support services in the proposed municipality."

Section 5. G.S. 136-41.2 reads as rewritten:

"§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.

(a) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has conducted the most recent election required by its charter or the general law, whichever is applicable, for the purpose of electing municipal officials. The literal requirement that the most recent required election shall have been held may be waived only:

- (1) Where the members of the present governing body were appointed by the General Assembly in the act of incorporation and the date for the first election of officials under the terms of that act has not arrived; or,
- (2) Where validly appointed or elected officials have advertised notice of election in accordance with law, but have not actually conducted an election for the reason that no candidates offered themselves for office.

(b) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has levied an ad valorem tax for the current fiscal year of at least five cents (5¢) on the one hundred dollars (\$100.00) valuation upon all taxable property within its corporate limits, and unless it has actually collected at least fifty percent (50%) of the total ad valorem tax levied for the preceding fiscal year; provided, however, that, for failure to have collected the required percentage of its ad valorem tax levy for the preceding fiscal year:

- (1) No municipality making in any year application for its first annual allocation shall be declared ineligible to receive such allocation; and
- (2) No municipality shall be declared ineligible to receive its share of the annual allocation to be made in the year 1964.

(c) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has formally adopted a budget ordinance in substantial compliance with G.S. 160-410.3, showing revenue received from all sources, and showing that funds have been appropriated for at least two of the following municipal ~~services;~~ services if the municipality was incorporated with an effective date prior to January 1, 2000, water distribution; sewage collection or disposal; garbage and refuse collection or disposal; fire protection; police protection; street maintenance, construction, or right-of-way acquisition; or street lighting, lighting, or at least four of the following

municipal services if the municipality was incorporated with an effective date of on or after January 1, 2000: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning.

(d) The provisions of this section shall not apply to any municipality incorporated prior to January 1, 1945."

Section 6. G.S. 105-472 is amended by adding a new subsection to read:

"(d) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 7. G.S. 105-486 is amended by adding a new subsection to read:

"(d) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 8. Chapter 1096 of the 1967 Session Laws is amended by adding a new section to read:

"Section 10.2. No municipality may receive any funds under this act if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this act, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 9. G.S. 105-501 reads as rewritten:

"§ 105-501. Distribution of additional taxes.

The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the amount allocated to each county as provided in G.S. 105-486(b). The amount allocated to each taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this

Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999.

If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter.

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

- (1) The Department of Revenue in performing the duties imposed by G.S. 105-275.2 and by Article 15 of this Chapter.
- (2) The Property Tax Commission.
- (3) The Institute of Government in operating a training program in property tax appraisal and assessment.
- (4) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission."

Section 10. G.S. 105-113.82 is amended by adding a new subsection to read:

"(h) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 11. G.S. 105-116.1 is amended by adding a new subsection to read:

"(e) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 12. Section 1 of this act applies with respect to municipalities for which the Joint Legislative Commission on Municipal Incorporations makes recommendations on or after the date this act becomes law. Sections 1 through 11 of this act, other than the

repeal of G.S. 120-169.1(a), do not apply to any community which first filed a petition with the Joint Legislative Commission on Municipal Incorporations prior to July 20, 1999. The remainder of this act is effective when it becomes law.

Section 13. Sections 1 through 11 of this act, other than the repeal of G.S. 120-169.1(a), shall not apply to the community of Gray's Creek in Cumberland County nor to the Community of Union Cross in Forsyth County if either of those communities file a petition with the Joint Legislative Commission on Municipal Incorporations before July 1, 2002.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 4:11 p.m. on the 13th day of August, 1999.

H.B. 978

SESSION LAW 1999-459

AN ACT TO AUTHORIZE THE OWNER OF A PRIVATE OR JOINT PRIVATE PIER AT WHITE LAKE STATE LAKE THAT WAS DAMAGED AS A RESULT OF A NATURAL DISASTER TO REBUILD THE PIER TO ITS CONDITION IMMEDIATELY PRECEDING THE DAMAGE, TO AUTHORIZE THE CONSTRUCTION OF ADDITIONAL BOAT STALLS ON A PIER AT WHITE LAKE STATE LAKE UNDER CERTAIN CIRCUMSTANCES, AND TO DELETE CERTAIN LANDS USED FOR THE FALLS LAKE STATE TRAIL FROM THE STATE PARKS SYSTEM AND REALLOCATE THOSE LANDS TO THE WILDLIFE RESOURCES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding 15A NCAC 12C.0305(b), the Division of Parks and Recreation of the Department of Environment and Natural Resources shall permit the owner of a private pier or joint private pier constructed on the floor of White Lake State Lake that was damaged on or after 1 January 1996 and before 1 July 1999 as a result of a hurricane or other natural disaster to rebuild the pier to its condition immediately preceding the damage. A person who applied for a permit to rebuild a pier that was damaged on or after 1 January 1996 may reapply for a permit no later than 1 July 2000.

Section 2. Notwithstanding 15A NCAC 12C.0303, the Division of Parks and Recreation of the Department of Environment and Natural Resources shall permit a person to construct a second or subsequent boat stall on a private pier or joint private pier constructed on the floor of White Lake State Lake when all of the conditions set out in this section are satisfied. This section applies only to Pier Number 52 and is subject to the following conditions:

- (1) The person has a recorded deed that conveys an easement to use the pier.

- (2) The property owner has a recorded deed that conveys an easement of egress, ingress, and regress as to the water front property from which the pier extends.
- (3) The water frontage of the property from which the pier extends is at least 75 feet in length.
- (4) The pier is at least 10 feet from the boundary of any adjacent property.
- (5) Construction of the boat stall will not cause the overall length of the pier structure to exceed 225 feet.

Section 3. Pursuant to the requirements of G.S. 113-44.14 applicable to the deletion of land from the State Parks System, the General Assembly hereby deletes from the State Parks System all segments and the entire width of the Falls Lake State Trail located within game lands managed by the Wildlife Resources Commission including the segment from the eastern boundary of the Falls Lake State Recreation Area State Management Center at an unnamed Wildlife Resources Commission fire road to the western boundary of the Shinleaf Recreation Area at New Light Road; the segment from the eastern boundary of Shinleaf Recreation Area to State Highway NC 98; the segment from State Highway NC 98 to the second unnamed tributary on the north shore of the Upper Barton Creek arm of Falls Lake; the segment from the Six Forks Road bridge at the south shore of Lower Barton Creek to the western boundary of the Yorkshire Center Management Area at State Road 3326 (Mizelle Lane); and the segment from the footbridge across an unnamed creek on the western boundary of the Yorkshire Center Management Area to the boundary between the eastern end of the State-leased area and the western edge of the land managed by the United States Army Corps of Engineers. This land is shown on a map entitled "Lands to be Deleted from Falls Lake State Recreation Area", dated 5 March 1999 and filed in the State Property Office. The State's leased interest in this land is hereby reallocated to the Wildlife Resources Commission, and the Wildlife Resources Commission shall manage this land.

Section 4. If any section of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section does not affect the validity of this act as a whole or any section of this act other than the section declared to be unconstitutional or invalid.

Section 5. This act is effective when it becomes law. Section 1 of this act applies to any application for a permit to rebuild a pier that is made on or before 1 July 2000. Section 2 of this act applies to any application for a permit to construct a boat stall that is made on or before 1 July 2000.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

Became law upon approval of the Governor at 4:18 p.m. on the 13th day of August, 1999.

S.B. 244

SESSION LAW 1999-460

AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CHANGES TO THE ESCHEATS LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116B-4 reads as rewritten:

"§ 116B-4. *Claim for escheated property.*

Any escheated property or proceeds from the sale of escheated property held by the Escheat Fund pursuant to ~~G.S. 116B-27~~ G.S. 116B-5 may be claimed by an heir of the decedent or by a creditor of the decedent who is not barred from presenting a claim under the provisions of Article 19 of ~~Chapter 28A~~, Chapter 28A of the General Statutes. ~~The claim shall be made on a form prescribed by the Treasurer and shall be presented to the Treasurer. If the Treasurer determines that the claimant is entitled to all or a portion of the escheated property or the proceeds from its sale, he shall make payment of the claim or return of the property. The claimant shall agree to indemnify the State, the State Treasurer and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. The provisions of G.S. 116B-38(b) and (c) G.S. 116B-67(a), (c), (d), and (e) and G.S. 116B-68 shall apply to a claim under this subsection, section."~~

Section 2. Article 2 of Chapter 116B of the General Statutes is repealed.

Section 3.(a) Except as provided in subsection (b) of this section, Article 3 of Chapter 116B of the General Statutes is repealed.

Section 3.(b) G.S. 116B-27 is recodified as G.S. 116B-5 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Section 4.(a) G.S. 116B-6(b), as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(b) Investment and Transfer of Assets; Income. -- The Treasurer ~~shall be~~ is the trustee of the Escheat Account and ~~shall have~~ has full power to invest and reinvest the assets of the Escheat Account and the Escheat Fund. Subject to the Treasurer's withholding an amount necessary to accomplish ~~his~~ the Treasurer's duties as set out in this Chapter, including subsections (e), (f) and (g) of this section, the Treasurer shall transfer, at least annually, to the Escheat Account all moneys then in ~~his~~ the Treasurer's custody received as, or derived

from the disposition of, escheated and abandoned property and shall disburse to the State Education Assistance Authority, as provided in G.S. 116B-37, G.S. 116B-7, the income derived from the investment of the Escheat Account and the Escheat Fund. All moneys transferred to the Escheat Account under this section shall be accounted for and administered separately from other assets and money in the trust fund created under G.S. 116-209."

Section 4.(b) G.S. 116B-6(h) as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(h) Expenditures. -- The Treasurer may expend the funds in the Escheat Fund, other than funds in the Escheat Account, for the payment of claims for refunds to owners, holders and claimants under G.S. 116B-4; for the payment of costs of maintenance and upkeep of abandoned or escheated property; costs of preparing lists of names of owners of abandoned property to be furnished to clerks of superior court; costs of notice and publication; costs of appraisals; fees of persons employed pursuant to G.S. 116B-47; G.S. 116B-8 costs involved in determining whether a decedent died without heirs; costs of a title search of real property that has escheated; and costs of auction or sale under this Chapter. All other costs, including salaries of personnel, necessary to carry out the duties of the Treasurer under this Chapter, shall be appropriated from the funds of the Escheat Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes."

Section 5. G.S. 116B-8, as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"§ 116B-8. *Employment of persons with specialized skills or knowledge.*

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as ~~he shall deem~~ the Treasurer deems necessary or appropriate for the administration of this Chapter, ~~including, but specifically not limited to,~~ including valuation, maintenance, upkeep, management, sale and conveyance of property and determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate legal description of real property which ~~he~~ the Treasurer has reason to believe may have escheated. Persons whose services are employed by the Treasurer pursuant to this section to determine sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as employees of the Department of State Treasurer assigned to determine sources and amounts of unreported property. Compensation of persons whose services are employed pursuant to this section on a contingent fee basis shall be limited to twelve percent (12%) of the final assessment."

Section 6. Chapter 116B of the General Statutes is amended by adding the following new article to read:

"ARTICLE 4.

"North Carolina Unclaimed Property Act.

"§ 116B-51. Short title.

This Article may be cited as the 'North Carolina Unclaimed Property Act.'

"§ 116B-52. Definitions.In this Chapter:

- (1) 'Apparent owner' means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.
- (2) 'Business association' means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.
- (3) 'Domicile' means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.
- (4) 'Financial organization' means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.
- (5) 'Holder' means a person obligated to hold for the account of or deliver or pay to the owner property that is subject to this Chapter.
- (6) 'Insurance company' means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.
- (7) 'Mineral' means gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, or any other substance defined as a mineral by the law of this State.
- (8) 'Mineral proceeds' means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:
 - a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

- b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and
 - c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.
- (9) 'Owner' means a person who has a legal or equitable interest in property subject to this Chapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.
- (10) 'Person' means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (11) 'Property' means tangible personal property physically located within this State or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:
- a. Money, a check, draft, deposit, interest, or dividend;
 - b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;
 - c. Stock or other evidence of ownership of an interest in a business association;
 - d. A bond, debenture, note, or other evidence of indebtedness;
 - e. Money deposited to redeem stocks, bonds, coupons, or other securities, or to make distributions;
 - f. An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and
 - g. An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.
- (12) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

- (13) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
- (14) 'Treasurer' means the Treasurer of the State of North Carolina or the Treasurer's designated agent.
- (15) 'Utility' means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transportation of the public, the transmission of communications, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

"§ 116B-53. Presumptions of abandonment.

(a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.

(b) An indication of an interest in property includes:

- (1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;
- (2) The presentment of a check or other instrument of payment of interest made with respect to debt of a business association or, in the case of an interest payment made by electronic or similar means, evidence that the interest payment has been received;
- (3) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;
- (4) The making of a deposit to or withdrawal from an account in a financial organization;
- (5) Owner activity in another account with the holder of a deposit described in subdivisions (c)(2) and (c)(6) of this section; and
- (6) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has

otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

- (1) Traveler's check, 15 years after issuance;
- (2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the property;
- (3) Money order, cashier's check, teller's check, and certified check, seven years after issuance;
- (4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, five years after the earlier of:
 - a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, or
 - b. The date of the second mailing of a stock certificate or other evidence of ownership, a statement of account, or other notification or communication which second mailing was returned as undeliverable or the date the holder discontinued mailings, notifications, or communications to the apparent owner;
- (5) Debt of a business association, other than a bearer bond or an original issue discount bond, five years after the date of an interest payment unclaimed by the apparent owner;
- (6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property;
- (7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;
- (8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift card;
- (9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

- (10) Property distributable by a business association in a course of dissolution, one year after the property becomes distributable;
- (11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;
- (12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;
- (13) Wages or other compensation for personal services, two years after the compensation becomes payable;
- (14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;
- (15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and
- (16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(d) At the time that an interest in property is presumed abandoned under subsection (c) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(e) Property is payable or distributable for purposes of this Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment or distribution, except as otherwise provided by the Uniform Commercial Code.

"§ 116B-54. Exclusion for forfeited reservation deposits, certain gift certificates or electronic gift cards, prepaid calling cards, certain manufactured home buyer deposits, and certain credit balances.

(a) A forfeited reservation deposit is not abandoned property. For the purposes of this section, the term 'reservation deposit' means an amount of money paid to a business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term 'reservation deposit' does not include an application fee, a utility deposit, or a deposit made toward the purchase of real property.

(b) A gift certificate or electronic gift card is not abandoned property when the gift certificate or electronic gift card:

- (1) Conspicuously states that the gift certificate or electronic gift card does not expire;
- (2) Bears no expiration date; or
- (3) States that a date of expiration printed on the gift certificate or electronic gift card is not applicable in North Carolina.

(c) A prepaid calling card issued by a public utility as defined in G.S. 62-3(23)a.6. is not abandoned property.

(d) A buyer deposit that a dealer is authorized to retain under either G.S. 143-143.21A or G.S. 143-143.21B is not abandoned property and is not subject to this Article.

(e) Credit balances as shown on the records of a business association to or for the benefit of another business association, shall not constitute abandoned property. For purposes of this section, the term 'credit balances' means items such as overpayments or underpayments on the sale of goods or services.

"§ 116B-55. Contents of safe deposit box or other safekeeping depository.

Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65.

"§ 116B-56. Rules for taking custody.

(a) Except as otherwise provided in this Chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:

- (1) The last known address of the apparent owner, as shown on the records of the holder, is in this State;
- (2) The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this State;
- (3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:
 - a. The last known address of the person entitled to the property is in this State; or
 - b. The holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;
- (4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property, and the holder is domiciled in this State or is a government or

governmental subdivision, agency, or instrumentality of this State;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State; or

(6) The property is a traveler's check or money order purchased in this State or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

(b) In the case of an amount payable under the terms of an annuity or insurance policy, the last known address of the person entitled to the property is presumed to be the same as the last known address of the insured or the principal, as shown on the records of the insurance company, if:

(1) A person other than the insured or the principal is entitled to the property; and

(2) Either:

a. No address of the person is known to the insurance company; or

b. The records of the insurance company do not reflect the identity of the person.

"§ 116B-57. Dormancy charge; other lawful charges.

(a) A holder may deduct from property presumed abandoned a reasonable charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled.

(b) This Chapter does not prevent a holder from deducting from property presumed abandoned other lawful charges specifically authorized by statute or by a valid and enforceable contract.

"§ 116B-58. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder. In asserting these affirmative defenses, a holder who is also the issuer may satisfy the holder's burden of proof

by showing a written acknowledgement by the payee of a check, draft, or similar instrument that no obligation is owed the payee.

"§ 116B-59. Notice by holders to apparent owners.

(a) A holder of property presumed abandoned shall make a good faith effort to locate an apparent owner.

(b) The holder shall send written notice, by first-class mail, to the apparent owner, not more than 120 days or less than 60 days before filing the report required by G.S. 116B-60, to the last known address of the apparent owner as reflected in the holder's records, if the value of the property is fifty dollars (\$50.00) or more.

(c) The notice must contain:

- (1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;
- (2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;
- (3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following October 1 or, if the holder is an insurance company, by the following April 1, the property will be placed in the custody of the Treasurer, to whom all further claims shall be directed.

"§ 116B-60. Report of abandoned property; certification by holders with tax return.

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property.

(b) The report must be verified and must contain:

- (1) A description of the property;
- (2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars (\$50.00) or more;
- (3) An aggregated amount of items valued under fifty dollars (\$50.00) each;
- (4) In the case of an amount of fifty dollars (\$50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;
- (5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the property; and
- (6) Other information that the Treasurer by rule prescribes as necessary for the administration of this Chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property,

the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. A request for an extension for filing a report shall be accompanied by an extension processing fee of ten dollars (\$10.00). The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day.

"§ 116B-61. Payment or delivery of abandoned property.

(a) Upon filing the report required by G.S. 116B-60, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would no longer result.

(b) If the property reported to the Treasurer is a security or security entitlement under Article 8 of Chapter 25 of the General Statutes, the Treasurer is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of Chapter 25 of the General Statutes.

(c) If the holder of property reported to the Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to G.S. 25-8-405, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with G.S. 116B-63.

"§ 116B-62. Preparation of list of owners by Treasurer.

(a) There shall be delivered to the clerk of superior court of each county prior to June 30 of each year a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain:

- (1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property;
- (2) The names and addresses of the holders of the abandoned property; and
- (3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

(b) At the time the lists are distributed to the clerks of superior court, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars (\$50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall retain the lists on permanent file in their offices and shall make them available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of escheated and abandoned property may be confidential until six months after the notice to clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund.

"§ 116B-63. Custody by State; recovery by holder; defense of holder.

(a) In this section, payment or delivery is made in 'good faith' if:

- (1) Payment or delivery was made in a reasonable attempt to comply with this Chapter;

- (2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and
- (3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the Treasurer, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the Treasurer in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the Treasurer pursuant to this Chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the Treasurer shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under G.S. 116B-71(a).

(d) A holder who has delivered property other than money to the Treasurer pursuant to this Chapter may reclaim the property if it is still in the possession of the Treasurer, without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The Treasurer may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the Treasurer in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the Treasurer, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the Treasurer.

"§ 116B-64. Income or gain accruing after payment or delivery.

If property other than money is delivered to the Treasurer under this Chapter, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends shall be paid until the date on which the amount of the deposits, accounts, or funds, or the shares must be remitted or delivered to the Treasurer under G.S. 116B-61. Otherwise, when property is delivered or paid to the Treasurer, the Treasurer shall hold the property without liability for income or gain.

"§ 116B-65. Public sale of abandoned property.

(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the Treasurer. If securities are sold by the Treasurer before the expiration of three years after their delivery to the Treasurer, a person making a claim under this Chapter before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for expenses of sale. A person making a claim under this Chapter after the expiration of the three-year period is entitled to receive the securities delivered to the Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the Treasurer, except in a case of intentional misconduct by the Treasurer.

(c) A purchaser of property at a sale conducted by the Treasurer pursuant to this Chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership.

"§ 116B-66. Claim of another state to recover property.

(a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:

- (1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;
- (2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for

the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

- (3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;
- (4) The property was subjected to custody by this State under G.S. 116B-56(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or
- (5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under G.S. 116B-56(7), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the Treasurer, who shall decide the claim within 90 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The Treasurer shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property.
"§ 116B-67. Claim for property paid or delivered to the Treasurer.

(a) A person, excluding another state, claiming property paid or delivered to the Treasurer may file a claim on a form prescribed by the Treasurer and verified by the claimant.

(b) At the discretion of the Treasurer, the claim shall be made to the holder or to the holder's successor. If the holder is satisfied that the claim is valid and that the claimant is the owner of the property, the holder shall so certify to the Treasurer by written statement attested by the holder under oath, or in the case of a corporation, by two principal officers, or one principal officer and an authorized employee of the corporation. The determination of the holder that the claimant is the owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from the sale, to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by an assignment. In the event the holder rejects the claim, the claimant may appeal to the Treasurer.

If the holder, or the holder's successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other information, the claim shall state the facts surrounding the unavailability of the holder and the lack of a successor.

(c) Within 90 days after a claim is filed, the Treasurer shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the Treasurer or maintain an action under G.S. 116B-68.

(d) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the Treasurer to the claimant.

(e) The claimant or claimants and the holder, if the holder either certifies that the claimant is the owner under subsection (b) of this section or recovers money and property from the Treasurer under G.S. 116B-63, shall agree to indemnify, save harmless, and defend the State, the Treasurer, and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. In like manner, the claimant shall also agree to indemnify, save harmless, and defend the holder, if the holder certifies the claim under subsection (b) of this section or pays or delivers property to the claimant under G.S. 116B-63.

"§ 116B-68. Action to establish claim.

A person aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the Superior Court of Wake County, naming the Treasurer as a defendant.

"§ 116B-69. Election to take payment or delivery.

(a) The Treasurer may decline to receive property reported under this Chapter which the Treasurer considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the Treasurer and upon conditions and terms prescribed by the Treasurer, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the Treasurer and is not presumed abandoned until it otherwise would be presumed abandoned under this Article.

"§ 116B-70. Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.

(a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the

holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.

(b) Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location.

"§ 116B-71. Periods of limitation.

(a) The expiration, before or after the effective date of this Article, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty of a holder to file a report or to pay or deliver or transfer property to the Treasurer as required by this Article.

(b) An action or proceeding may not be maintained by the Treasurer to enforce this Article in regard to the reporting, delivery, or payment of property more than five years after the holder filed a report with the Treasurer in which the holder specifically identified property, should have but failed to identify property, or gave express notice to the Treasurer of a dispute regarding property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

"§ 116B-72. Requests for reports and examination of records.

(a) The Treasurer may require a person who has not filed a report, or a person who the Treasurer believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the Treasurer. The report must state whether the person is holding property reportable under this Chapter, describe property not previously reported or as to which the Treasurer has made inquiry, and specifically identify and state the value of property that may be in issue.

(b) The Treasurer, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this Chapter. The Treasurer may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this Chapter. The Treasurer may contract with any other person to conduct the examination on behalf of the Treasurer.

(c) The Treasurer at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the Treasurer has given the notice required by subsection (b) of this section to both the association and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the Treasurer, or the Treasurer's agents, employees, or designated representatives, in the course of conducting an examination are confidential, but the documents and papers may be:

- (1) Used by the Treasurer in the course of an action to collect unclaimed property or otherwise enforce this Chapter;
- (2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;
- (3) Produced pursuant to subpoena or court order; or
- (4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination results in the disclosure of property reportable under this Chapter, the Treasurer may assess, against a holder who made a fraudulent report, the cost of the examination at the rate of two hundred dollars (\$200.00) a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association.

(f) If a holder does not maintain the records required by G.S. 116B-73 and the records of the holder available for the periods subject to this Chapter are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay to the Treasurer the amount the Treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been, but was not reported.

"§ 116B-73. Retention of records.

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the Treasurer.

(b) A business association that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

"§ 116B-74. Discretionary precompliance review.

A holder may request the Treasurer to conduct a precompliance review of the holder's compliance program to educate the holder's employees on the unclaimed property laws and filing procedures and to recommend ways to facilitate the holder's compliance with the law. Subject to the availability of staff, the Treasurer may conduct a precompliance review upon request. The Treasurer may charge the

holder a precompliance review fee of up to five hundred dollars (\$500.00) per day for conducting this review.

"§ 116B-75. Enforcement.

(a) The Treasurer may maintain an action in this or another state to enforce this Chapter.

(b) The Treasurer may order a person required to report, pay, or deliver property under this Chapter, or an officer or employee of the person, or a person having possession, custody, care, or control of records relevant to the matter under inquiry, or any other person having knowledge of the property or records, to appear before the Treasurer, at a time and place named in the order, and to produce the records and to give such testimony under oath or affirmation relevant to the inquiry. For purposes of this subsection, the Treasurer may administer oaths or affirmations. If a person refuses to obey an order of the Treasurer, the Treasurer may apply to the Superior Court of Wake County for an order requiring the person to obey the order of the Treasurer. Failure to comply with the court order is punishable for contempt.

"§ 116B-76. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in G.S. 116B-72. The Treasurer by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The Treasurer may join with another state to seek enforcement of this Chapter against any person who is or may be holding property reportable under this Chapter.

(c) At the request of another state, the Attorney General of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

(d) The Treasurer may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the Treasurer. With the approval of the Attorney General of this State, the Treasurer may retain any other attorney to commence an action in this State on behalf of the Treasurer. This State shall pay all expenses, including attorneys' fees, in maintaining an action under this subsection. With the Treasurer's approval, the expenses and attorneys' fees may be paid from money received under this Chapter. The Treasurer may agree to pay expenses and attorneys' fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorneys' fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Chapter.

(e) The Treasurer is authorized to make such expenditures from the funds of the Escheat Fund as may be necessary to effectuate the provisions of this section.

"§ 116B-77. Interest and penalties; waiver.

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this Chapter shall pay to the Treasurer interest at the rate established pursuant to this subsection on the property or value of the property from the date the property should have been reported, paid, or delivered. On or before June 1 and December 1 of each year, the Treasurer shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Treasurer may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this Chapter, or willfully fails to perform other duties imposed by this Chapter, shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars (\$1,000) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars (\$25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars (\$1,000) for each day from the date a report under this Chapter was due, up to a maximum of twenty-five thousand dollars (\$25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(d) The Treasurer for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsection (b) of this section.

"§ 116B-78. Agreement to locate property.

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the Treasurer's denial of a claim.

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by

the owner, and states the value of the property before and after the fee or other compensation has been deducted.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has made an agreement to pay compensation that is unconscionable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorneys' fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection (d) of this section.

(f) Any person who enters into an agreement covered by this section with an owner shall register annually with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of incorporation or residence, as applicable, and the person's federal identification number. A registration fee of one hundred dollars (\$100.00) shall be paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.

"§ 116B-79. Transitional provisions.

(a) An initial report filed under this Article for property that was not required to be reported before the effective date of this Article but which is subject to this Article must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date of this Article as if this Article had been in effect during that period.

(b) This Article does not relieve a holder of a duty that arose before the effective date of this Article to report, pay, or deliver property. Except as otherwise provided in G.S. 116B-71(b) and G.S. 116B-77(d), a holder who did not comply with the law in effect before the effective date of this Article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

"§ 116B-80. Rules.

The Treasurer may adopt rules necessary to carry out this Chapter."

Section 7. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

- (1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor

Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title

only pursuant to the order of a court of competent jurisdiction.

If the registered or certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars (\$800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall ~~escheat to the State and be paid immediately to the treasurer~~ Treasurer for disposition pursuant to Chapter 116B of the General Statutes. ~~A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.~~

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

Section 8. G.S. 29-12 reads as rewritten:

"§ 29-12. *Escheats.*

If there is no person entitled to take under G.S. 29-14 or ~~29-15~~, G.S. 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or ~~29-22~~ G.S. 29-22 the net estate shall escheat as provided in ~~G.S. 116A-2, G.S. 116B-2.~~"

Section 9. G.S. 53-43.7(b) reads as rewritten:

"(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed ~~by the Treasurer or by the lessor, if retained by the~~

~~lessor pursuant to a determination by the Treasurer under G.S. 116B-31(c), lessor if the Treasurer declines to receive the property under G.S. 116B-69(a)."~~

Section 10. G.S. 53-43.7(d) reads as rewritten:

"(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under ~~G.S. 116B-31(c)~~; G.S. 116B-55; but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to ~~him~~, the Treasurer, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer."

Section 11. G.S. 53B-4 reads as rewritten:

"§ 53B-4. *Access to financial records.*

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to:

- (1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a county department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a fiduciary;
- (2) Authorization under G.S. 105-251, 105-251.1, or 105-258;
- (3) Search warrant as provided in Article 11 of Chapter 15A of the General Statutes;
- (4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution;

- (5) The authority granted under ~~G.S. 116B-39~~; G.S. 116B-72 and G.S. 116B-75;
- (6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or 147-64.7(a); G.S. 147-64.7(a);
- (7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student loans;
- (8) Pending litigation to which the government authority and the customer are parties;
- (9) Subpoena or court order in connection with a grand jury proceeding;
- (10) A writ of execution under Article 28 of Chapter 1 of the General Statutes; or
- (11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.

As used in this section, the term 'reasonable specificity' means that degree of specificity reasonable under all the circumstances, ~~and and,~~ with respect to requests under G.S. 116B-72 and G.S. 116B-75, may include designation by general type or class as authorized in G.S. 116B-39, class."

Section 12. G.S. 116-209.3 reads as rewritten:

"§ 116-209.3. *Additional powers.*

The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated 'State Education Assistance Authority Loan Fund' (the 'Loan Fund') which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other eligible lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be

maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to ~~G.S. 116B-37~~ G.S. 116B-7. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of Chapter 116B of the General Statutes and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account."

Section 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 14. The Revisor of Statutes shall cause to be printed with this act all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Section 15. This act becomes effective January 1, 2000, and shall apply to property existing on or after that date. G.S. 116B-54(d), as enacted in Section 6 of this act, is intended to clarify and not change existing law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law upon approval of the Governor at 11:15 a.m. on the 16th day of August, 1999.

S.B. 17

SESSION LAW 1999-461

AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE PERMITS TO TOURISM RESORTS ON A STATEWIDE BASIS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-101 is amended by adding a new subdivision to read:

'(14b) Tourism resort' means:

- a. Any restaurant and lodging facility, whether public or private, owned and operated as a resort property offering food, beverage, lodging, and meeting facilities to travelers and tourists and featuring one or more golf courses and two or more tennis courts

along with other recreational and sporting activities,
or

- b. Any restaurant, whether public or private, owned and operated as a resort property offering food and beverage to travelers and tourists and featuring an equestrian center and two or more tennis courts along with other recreational and sporting activities.

Receipts from sporting and recreational activities of a tourism resort shall be at least twenty-five percent (25%) of total gross receipts. Receipts from the sale of alcoholic beverages shall not exceed fifty percent (50%) of total gross receipts. A tourism resort open to the public shall advertise at least quarterly in a regional or national travel or sports industry publication, or in the State travel guide published by the North Carolina Department of Commerce."

Section 2. G.S. 18B-603(f) reads as rewritten:

"(f) Permits Not Dependent on Elections. -- The Commission may issue the following kinds of permits without approval at an election:

- (1) Special occasion permits;
- (2) Limited special occasion permits;
- (3) Brown-bagging permits for private clubs and congressionally chartered veterans organizations;
- (4) Culinary permits, except as restricted by subdivision (d)(5);
- (5) Special one-time permits issued under G.S. 18B-1002;
- (6) All permits listed in G.S. 18B-1100;
- (7) On-premises malt beverage permits and on-premises unfortified wine permits for a tourism ABC ~~establishment~~ establishment;
- (8) The permits authorized by G.S. 18B-100(1), (3), (5), and (10) for tourism resorts."

Section 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 20th day of July, 1999.

Became law on the 21st day of August, 1999, after presentation to the Governor.

S.B. 607

SESSION LAW 1999-462

AN ACT TO AUTHORIZE THE ALCOHOLIC BEVERAGE CONTROL COMMISSION TO ISSUE CERTAIN PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-101 is amended by adding a new subdivision to read:

- "(7a) 'Historic ABC establishment' means a restaurant or hotel that meets all of the following requirements:
- a. Is on the national register of historic places.

- b. Is a property designed to attract local, State, national, and international tourists located on a State Route (SR) and with a property line located within 1.5 miles of the intersection of a designated North Carolina scenic byway as defined in G.S. 136-18(31).
- c. Is located within 15 miles of a national scenic highway.
- d. Is located in a county in which the on-premises sale of malt beverages or unfortified wine is authorized in two or more cities in the county."

Section 2. G.S. 18B-1006 is amended by adding a new subsection to read:

"(n) National Historic Landmark District. -- The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4) and (6) located within a National Historical Landmark as defined in 16 U.S.C. § 470a(a)(1)(B) located in a county that meets all of the following requirements:

- (1) Has approved the sale of malt beverages and unfortified wine but not mixed beverages.
- (2) Has at least one city that has approved the operation of an ABC store and the sale of mixed beverages.
- (3) Has at least 150,000 population based on the last federal census."

Section 3. G.S. 18B-603(f) reads as rewritten:

"(f) Permits Not Dependent on Elections. -- The Commission may issue the following kinds of permits without approval at an election:

- (1) Special occasion permits;
- (2) Limited special occasion permits;
- (3) Brown-bagging permits for private clubs and congressionally chartered veterans organizations;
- (4) Culinary permits, except as restricted by subdivision (d)(5);
- (5) Special one-time permits issued under G.S. 18B-1002;
- (6) All permits listed in G.S. 18B-1100;
- (7) On-premises malt beverage permits and on-premises unfortified wine permits for a tourism ABC establishment, establishment;
- (8) The permits authorized by G.S. 18B-1001(1), (3), (5), and (10) for historic ABC establishments."

Section 4. G.S. 18B-404(b) reads as rewritten:

"(b) Issuance. -- If mixed beverages sales have been approved for an establishment under the last paragraph of G.S. 18B-603(d) G.S. 18B-603(d1) or under G.S. 18B-603(e), the purchase-transportation permit for that establishment may be issued by the local board of any city located in the same county as the establishment, provided the city has approved the sale of mixed beverages. Otherwise a licensed establishment may obtain a mixed beverages purchase-transportation permit only from the local board for the jurisdiction in which it is located. If there is no ABC store within the establishment's

jurisdiction, then the mixed beverages permittee shall obtain a mixed beverages purchase-transportation permit from the nearest and most convenient ABC store."

Section 5. G.S. 18B-305 is amended by adding a new subsection to read:

"(c) Notwithstanding subsection (b) of this section, no permittee may refuse to sell alcoholic beverages to a person solely based on that person's race, religion, color, national origin, sex, or disability."

Section 6. G.S. 18B-603(d) reads as rewritten:

"(d) Mixed Beverage Elections. -- If a mixed beverage election is held under G.S. 18B-602(h) and the sale of mixed beverages is approved, the Commission may issue permits to qualified persons and establishments in the jurisdiction that held the election as follows:

- (1) The Commission may issue mixed beverage permits.
- (2) The Commission may issue on-premises malt beverage, unfortified wine, and fortified wine permits for establishments with mixed beverage permits, regardless of any other election or any local act concerning sales of those kinds of alcoholic beverages.
- (3) The Commission may issue off-premises malt beverage permits to any establishment that meets the requirements under G.S. 18B-1001(2) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages. The Commission may also issue off-premises unfortified wine permits to any establishment that meets the requirements under G.S. 18B-1001(4) in any township which has voted to permit the sale of mixed beverages, regardless of any other local act concerning sales of those kinds of alcoholic beverages.
- (4) The Commission may issue brown-bagging permits for private clubs and congressionally chartered veterans organizations but may no longer issue and may not renew brown-bagging permits for restaurants, hotels, and community theatres. A restaurant, hotel, or community theatre may not be issued a mixed beverage permit under subdivision (1) until it surrenders its brown-bagging permit.
- (5) The Commission may continue to issue culinary permits for establishments that do not have mixed beverage permits. An establishment may not be issued a mixed beverage permit under subdivision (1) until it surrenders its culinary permit.

(d1) In any county in which the sale of mixed beverages has been approved in elections in at least three cities that, combined, contain more than two-thirds the total county population as of the most recent federal census, the county board of commissioners may by resolution approve the sale of mixed beverages throughout the county, and the Commission may issue permits as if mixed beverages had been approved in a county election.

(d2) If a county or city holds a mixed beverage election and an ABC store election at the same time and the voters do not approve the establishment of an ABC store, the Commission may not issue mixed beverages permits in that county or city."

Section 7. G.S. 18B-603(h) reads as rewritten:

"(h) Permits Based on Existing Permits. -- In any county in which the sale of malt beverage on and off premises, the sale of unfortified wine on and off premises, the sale of mixed beverages, and the operation of an ABC system has been allowed in at least six cities in the county, or in any county adjacent to that county in which an ABC system has been allowed and which borders on the Atlantic Ocean, the Commission may issue permits to sports clubs as defined in G.S. 18B-1000(8) throughout the county. The Commission may issue the following permits:

- (1) On and Off Premises Malt Beverage;
- (2) On and Off Premises Unfortified Wine;
- (3) On and Off Premises Fortified Wine; or
- (4) Mixed Beverages.

The Commission may also issue on-premises malt beverage, unfortified wine, fortified wine and mixed beverages permits to a sports club located in a county adjacent to any county that has approved the sale of mixed beverages pursuant to ~~the last paragraph of G.S. 18B-603(d),~~ G.S. 18B-603(d1), if the county in which the sports club is located borders another state and has at least one city that has approved the sale of mixed beverages. Sports clubs holding mixed beverages permits shall purchase their spirituous liquor at the nearest ABC system store that is located in the county.

The Commission may further issue on-premises malt beverage and on-premises unfortified wine permits to a sports club located in a county bordering on another state that is adjacent to any county in which permits were issued pursuant to this subsection prior to August 1, 1993. The sports clubs must be located in the unincorporated areas of a county, in which the sale of malt beverages and unfortified wine is not permitted, and where there are six or more municipalities in that county where the sale of malt beverages and unfortified wine is permitted."

Section 8. G.S. 18B-805(f) reads as rewritten:

"(f) Surcharge Profit Shared. -- When, pursuant to ~~the last paragraph of G.S. 18B-603(d),~~ G.S. 18B-603(d1), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located outside the city, the local board operating the store at which the sale is made shall retain seventy-five percent (75%) of the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) and the remaining twenty-five percent (25%) shall be divided equally among the local ABC boards for all other cities in the county that have authorized the sale of mixed beverages.

When, pursuant to G.S. 18B-603(e), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located

at an airport outside the city, the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) shall be divided equally among the local ABC boards for all cities in the county that have authorized the sale of mixed beverages."

Section 9. G.S. 18B-603(h) reads as rewritten:

"(h) Permits Based on Existing Permits. -- In any county ~~in~~ which borders on the Atlantic Ocean and where:

- (1) ~~the~~ The sale of malt beverage on and off premises, the sale of unfortified wine on and off premises, the sale of mixed beverages, and the operation of an ABC system has been allowed in at least six cities in the county, or in any county adjacent to that county in which an ABC system has been allowed and which borders on the Atlantic Ocean, allowed;
or
- (2) The sale of malt beverage on and off premises, the sale of unfortified wine on and off premises, the sale of mixed beverages, and the operation of an ABC system has been allowed in at least eight cities in the county,

the Commission may issue permits to sports clubs as defined in G.S. 18B-1000(8) throughout the county.

The Commission may issue the following permits:

- (1) On and Off Premises Malt Beverage;
- (2) On and Off Premises Unfortified Wine;
- (3) On and Off Premises Fortified Wine; or
- (4) Mixed Beverages.

The Commission may also issue on-premises malt beverage, unfortified wine, fortified wine and mixed beverages permits to a sports club located in a county adjacent to any county that has approved the sale of mixed beverages pursuant to ~~the last paragraph of G.S. 18B-603(d),~~ G.S. 18B-603(d1), if the county in which the sports club is located borders another state and has at least one city that has approved the sale of mixed beverages. Sports clubs holding mixed beverages permits shall purchase their spirituous liquor at the nearest ABC system store that is located in the county.

The Commission may further issue on-premises malt beverage and on-premises unfortified wine permits to a sports club located in a county bordering on another state that is adjacent to any county in which permits were issued pursuant to this subsection prior to August 1, 1993. The sports clubs must be located in the unincorporated areas of a county, in which the sale of malt beverages and unfortified wine is not permitted, and where there are six or more municipalities in that county where the sale of malt beverages and unfortified wine is permitted."

Section 10. G.S. 18B-1006(j) reads as rewritten:

"(j) Recreation Districts. -- Notwithstanding the provisions of Article 6 of this Chapter, the Commission may issue permits for the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages to qualified businesses in a recreation district.

A "recreation district" ~~is~~ is an area that meets any of the following requirements:

- (1) An area that is located in a county that has not approved the issuance of permits, has at least two cities that have approved the sale of malt beverages, wine, and the operation of an ABC store, and contains a facility of at least 450 acres where five or more public auto racing events are held each ~~year; or year.~~
- (2) An area that is located in a county that borders a county which has held elections pursuant to G.S. 18B-600(f) and borders on another state and which (i) contains a facility of at least 225 acres where four or more public auto racing events are held each year or (ii) contains a facility of at least 140 acres where 80 or more motor sports events are held each year.
- (3) The A recreation district includes the area within a half-mile radius of ~~the a racing facility.~~ facility that meets the requirements of subdivision (1) or (2) of this subsection.
- (4) An area of at least 150 acres that offers any of the following facilities or services: Lodging, retail outlets, meeting facilities, restaurants, a white water rafting training facility, or other outdoor recreation activities and is located in a county that meets all of the following requirements:
 - a. Borders another state.
 - b. Contains part of the only National Park located in North Carolina.
 - c. Has only one city that has a local ABC system and has authorized the off-premises sale of malt beverages and the on-premises sale of unfortified wine, fortified wine, and mixed alcoholic beverages."

Section 11. Section 4 of Chapter 629 of the 1989 Session Laws reads as rewritten:

"Sec. 4. This act shall not include Columbus, Caswell, Person, Granville, Vance, Warren, Halifax, Robeson, Cleveland, Rutherford, ~~Macon~~, Polk, Davidson, and Davie Counties."

Section 12. G.S. 18B-1006(m) reads as rewritten:

"(m) Interstate Interchange Economic Development Zones. --

- (1) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that:
 - (1) a. Has approved the sale of malt beverages, unfortified wine, and fortified wine, but not mixed beverages;
 - (2) b. Operates ABC stores;
 - (3) c. Borders on another state; and
 - (4) d. Lies north and east of the Roanoke River.
- (2) The Commission may issue permits listed in G.S. 18B-1001(1), (3), (5), and (10) to qualified establishments

defined in G.S. 18B-1000(4), (6), and (8) and may issue permits listed in G.S. 18B-1001(2) and (4) to qualified establishments defined in G.S. 18B-1000(3) in any county that qualifies for issuance of permits pursuant to G.S. 18B-1006(k)(5). These permits may be issued without approval at an election and shall be issued only to qualified establishments that meet any of the following requirements:

- a. Located within one mile of any interstate highway interchange in that county.
 - b. Located within one mile of an establishment issued a permit under G.S. 18B-1006(k)(5).
- (3) The Commission may issue permits listed in G.S. 18B-1001(10), without approval at an election, to qualified establishments defined in G.S. 18B-1000(4), (6), and (8) located within one mile of an interstate highway interchange located in a county that meets all of the following requirements:
- a. Has approved the sale of malt beverages, unfortified wine, fortified wine, but not mixed beverages.
 - b. Contains one city that has approved the sale of malt beverages, unfortified wine, fortified wine, and mixed beverages.
 - c. Operates ABC stores.
 - d. Lies south and west of the Roanoke River and shares a common border with a county qualifying in subdivision (1) of this subsection.

This subsection shall also apply to an establishment in a county included in subdivision (3) of this subsection if the establishment is located within two miles of an interstate highway interchange that is within three miles of the common border described in sub-subdivision (3)d. of this subsection."

Section 13. G.S. 18B-101(14a) reads as rewritten:

"(14a) "Tourism ABC establishment" means a restaurant or hotel that meets both of the following requirements:

- a. Is located on property, a property line of which is located within 1.5 miles of the end of an entrance or exit ramp of a junction on a national scenic parkway designed to attract local, State, national, and international tourists between ~~Milepost 305 and the~~ State line and Milepost 460.
- b. Is located in a county in which the on-premises or off-premises sale of malt beverages or unfortified wine is authorized in at least one city."

Section 14. G.S. 18B-1006(k) reads as rewritten:

"(k) Residential Private Club and Sports Club Permits. -- The Commission may issue the permits listed in G.S. 18B-1001, without approval at an election, to a residential private club or a sports club that is located in a county that meets the requirements set in any of the following subdivisions:

- (8) Has an 18-hole golf course; is in the coastal area as defined in G.S. 113A-103, but only because it is adjacent to, adjoining, intersected by, or bounded by a coastal sound; which does not allow countywide sales of mixed beverages; which does not border another state; with a population of less than 15,000 according to the most recent decennial federal census; which does not have a city which has authorized the sale of mixed beverages; and which has least two cities with ABC systems.

The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store operated in the county."

Section 15. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

Became law on the 21st day of August, 1999, after presentation to the Governor.

EXTRA SESSION 1999

H.B. 2

SESSION LAW 1999-463 ES

AN ACT TO ENACT THE HURRICANE FLOYD RECOVERY ACT OF 1999, MAKING FINDINGS AS TO DAMAGE CAUSED BY HURRICANE FLOYD CONCERNING ESTABLISHMENT OF THE HURRICANE FLOYD RESERVE FUND, MAKING APPROPRIATIONS TO THE HURRICANE FLOYD RESERVE FUND, AUTHORIZING TEMPORARY RULES FOR IMPLEMENTATION OF THIS ACT, AUTHORIZING ESTABLISHMENT OF NEW PROGRAMS, EXPANSION OF EXISTING PROGRAMS, AND MODIFICATION OF EXISTING PROGRAMS TO IMPLEMENT THIS ACT, AUTHORIZING TRANSFER OF FUNDS TO FEDERAL AGENCIES AND LOCAL GOVERNMENTS, AUTHORIZING TIME-LIMITED POSITIONS TO IMPLEMENT THIS ACT, AUTHORIZING ADVISORY COUNCILS TO ADVISE STATE AGENCIES ON RECOVERY EFFORTS, PROVIDING FOR TAX EXEMPTION OF BENEFITS, CONCERNING A STUDY OF DISASTER COUNTIES TIER RANKINGS, CREATING A DISASTER RESPONSE AND RECOVERY COMMISSION, PROVIDING REPORTING REQUIREMENTS, PROVIDING FLEXIBILITY IN THE SCHOOL CALENDAR TO ACCOMMODATE EXTRAORDINARY CIRCUMSTANCES, AND EQUALIZING

THE UNEMPLOYMENT INSURANCE WAITING PERIOD FOR
ALL UNEMPLOYED FLOOD VICTIMS.

The General Assembly of North Carolina enacts:

PART I. TITLE OF ACT

Section 1. This act shall be known as "The Hurricane Floyd Recovery Act of 1999."

PART II. LEGISLATIVE FINDINGS

DAMAGE CAUSED BY HURRICANE FLOYD

Section 2.(a) The General Assembly finds that Hurricane Floyd was the worst natural disaster in the State's history. Extensive and prolonged flooding caused by the storm has been devastating to infrastructure and to the civil, social, economic, and environmental well-being of Eastern North Carolina. The entire economic base of Eastern North Carolina was undermined, including the ability of individuals to earn an income to support themselves and their families. A loss of this magnitude affects all of North Carolina. Extraordinary assistance to the affected areas is required if this region and, indeed, the entire State is to recover from the short- and long-term effects of the devastation.

Section 2.(b) The General Assembly finds that as a result of Hurricane Floyd:

- (1) The President of the United States declared 66 of the State's 100 counties to be a disaster area. Twenty-seven counties and 73 municipalities were severely impacted by the disaster.
- (2) Fifty-one people lost their lives.
- (3) People lost their loved ones, their homes, their communities, their houses of worship, their life savings, their jobs, their family mementos, their pets, and their ways of life.
- (4) Entire towns were flooded to the rooftops as the water levels of rivers and streams throughout Eastern North Carolina crested at flood-stage heights far beyond those ever seen before in this State.
- (5) Over 56,000 homes were damaged. Of these, over 7,000 homes were completely destroyed and another 17,000 are uninhabitable. This damage represents an extraordinary economic loss since less than thirteen percent (13%) of homes in the affected counties were covered by flood insurance. Many homeowners and inhabitants did not have flood insurance because they did not know there was a danger of flooding. (Most homes covered by flood insurance were financed mobile homes for which the loan included flood insurance.)

With the destruction of homes, the economic engine that propels communities was lost. On average, seventy-five percent (75%) of an American family's wealth is embodied in the home. That home equity is what the family relies on to finance businesses, job training for breadwinners, the children's education, and other enhancements to the family's overall well-being.

Additional State assistance to homeowners is therefore essential to assure that there is safe and adequate housing for the citizens of the affected region and to assure the economic viability of affected communities.

- (5a) Affected areas of the State lost rental properties that provided needed housing for those who cannot afford to purchase their own homes. Because of the depressed economy in areas most damaged, sufficient rental housing at affordable prices may not be built to replace the property damaged or destroyed, leaving persons who were forced from their homes unable to obtain adequate rental housing.
- (6) Over 12,000 businesses reported physical damage or disaster-related economic losses. Those businesses without the equity to either absorb their losses or qualify for Small Business Administration loans will not reopen and jobs will be permanently lost.
- (7) Millions of farm animals were lost, including 2,100,000 poultry, 1,180 cattle, 250 horses, and over 28,000 hogs.
- (8) The ability of North Carolina farmers to operate successfully in the coming year was severely compromised. Most farmers were heavily in debt before Hurricane Floyd caused nearly one billion dollars (\$1,000,000,000) of damage to agriculture in the State. Most farmers cannot take on the additional debt necessary to repair farm structures, purchase new equipment, rehabilitate damaged fields, and replace lost livestock. Many farmers may be facing bankruptcy without assistance. Many farmers may be unable to continue farming without assistance. It is therefore necessary to provide State assistance to farmers to preserve the agricultural sector of the economy in Eastern North Carolina and the economic stability of the region.
- (9) Commercial fishing losses are estimated at nineteen million dollars (\$19,000,000) and the 8,000 commercial fishers in the State are in danger of losing not only their livelihood, but a way of life their families have known for generations. Without State assistance to commercial fishers, this sector of the economy and the cultural heritage it represents may disappear from North Carolina. It is therefore necessary to provide State assistance to preserve this sector of the economy and this cultural heritage in Eastern North Carolina.

- (10) Tourists, industrial location consultants, and business decision makers were left with the impression that all of Eastern North Carolina was and will continue to be totally devastated. Tourists are therefore hesitant to consider visiting Eastern North Carolina, and industries are hesitant to consider locating or expanding in Eastern North Carolina. Without State programs to change the public perception of North Carolina, these negative and inaccurate impressions will threaten the long-term economic stability of the region and of the entire State.
- (11) Floodwater was tainted with raw sewage, pesticides, agricultural waste products, petroleum products, and dead farm animals, leaving untold environmental impacts and public health challenges. Flooding heavily damaged State, county, and local infrastructure. Water and sewer treatment plants were shut down and severely damaged due to the flooding, the road system in Eastern North Carolina was shut down and severely damaged due to the flooding, and numerous dams failed or are still in danger of failing. Threats to the public health and safety and severe and continued environmental degradation will continue without additional State programs and assistance to rectify the damage. Over 7,000 public and private wells have been tested for contamination and many must be retested before the water is safe to drink. The rivers, sounds, and offshore waters with low oxygen must be monitored to ensure that our fish and shellfish are safe to eat. Therefore, it is necessary to provide additional programs and resources to respond to the environmental havoc inflicted upon the citizens and communities of Eastern North Carolina by Hurricane Floyd.
- (12) Caskets floated out of the saturated ground.
- (13) There was erosion in the tax base in counties with persistently high poverty rates. These same counties must now bear the expense of replacing and repairing damaged infrastructure and meeting the additional educational and social services needs of their residents.

Section 2.(c) The General Assembly further finds that the devastation caused by Hurricane Floyd was of unprecedented proportions. Devastation of this magnitude was not planned for and could not have been planned for. Public and private decision making was predicated on the 100-year floodplain; actual flooding was throughout, and even outside of, the 500-year floodplain. No policies, no decision making, and no planning could adequately mitigate damage from or prepare an adequate response to such an extraordinary event. However, learning from this tragic event, the General Assembly finds that long-term planning for future natural disasters is appropriate.

Section 2.(d) The General Assembly further finds that the devastation caused by Hurricane Floyd in Eastern North Carolina continues to affect all aspects of the economy, the environment, public health and safety, infrastructure, public and private institutions, and the general welfare of the region and, indirectly, of the entire State. Immediate short-term responses and long-term responses are necessary to preserve a way of life in Eastern North Carolina, to preserve the economic condition of the entire State, and to preserve the reputation North Carolina has, nationally and internationally, as a great place to live and a great place to do business.

CRITICAL NEEDS NOT MET BY EXISTING STATE AND FEDERAL PROGRAMS AND FUNDS

Section 2.1.(a) The General Assembly finds that State and federal disaster relief initiatives are not intended to make individuals whole after a loss; they are intended to assist the affected area in recovering from the devastation caused by Hurricane Floyd. A massive recovery program that includes assistance to individuals is essential to the recovery of the affected area due to the severity of the damage, the magnitude of the geographical area it covered, and the duration of the emergency conditions in the area. The cumulative effect of devastating losses of lives, homes, schools, life savings, personal effects, jobs, businesses, and other social and civic institutions, and of concerns, both real and imagined, about public health issues and the environment, has substantially impaired the region's ability to recover.

Traditional support systems for victims of losses such as families, friends, religious organizations, relief organizations, other private entities, and existing public programs are simply inadequate given the magnitude of the problem. Their property was also damaged by the disaster and their resources were further depleted by the overwhelming and unrelenting need for emergency assistance after the storm.

Without significant additional State assistance to the area devastated by Hurricane Floyd, further deterioration of the economy, the environment, public health and safety, and quality of life in the region is likely to occur. Without additional State assistance:

- (1) Tens of thousands of people in uninsured, damaged homes will either not qualify for federal housing assistance or not have the resources to take advantage of federal housing assistance.
- (2) Local governments already overwhelmed with storm-related expenses may not have the resources to repair damaged infrastructure and provide the new infrastructure necessary for families relocating out of the flood zone.
- (3) Thousands of jobs will be permanently lost because an estimated 1,500 small businesses and 25 mid-sized businesses cannot qualify for Small Business Administration loans.

- (4) Farmers, most of whom were deeply in debt before being devastated by Hurricane Floyd, will recoup less than forty-three percent (43%) of their crop losses. Unless farmers receive assistance, the number of forced sales and bankruptcies will rise across all of Eastern North Carolina. Many farmers will never farm again.
- (5) Commercial fishers will recoup none of their losses.
- (6) Resources for drinking water protection, water quality monitoring to ensure the safety of fish and shellfish, solid waste cleanup, hazardous waste cleanup, remediation of high-risk underground storage tanks, and repair of high-hazard dams will be drastically limited.
- (7) The tourism industry will continue to suffer throughout the State due to negative publicity about the storm.

Section 2.1.(b) It is the intent of the General Assembly that the benefits of the projects and programs authorized by this act are for the common good and collective recovery of the people of this State following a devastating natural disaster directly affecting a large portion of the State and indirectly affecting the entire State. The entire State faces a major loss if Eastern North Carolina is not offered the assistance provided by this act. The purpose of this act is to provide an ultimate net public benefit to the State through a successful Hurricane Floyd recovery initiative in Eastern North Carolina.

COUNCIL OF STATE FINDINGS

Section 2.2. On December 9, 1999, the Council of State made the following findings in whereas clauses to a resolution:

- (1) Eastern North Carolina has a history of communities supported by an economic base of agriculture, small business, tourism, and professional services.
- (2) This economy provides the means for people of the region to earn the money needed for housing, transportation, and other basic necessities of life.
- (3) The vitality of Eastern North Carolina communities is dependent upon the prosperity of these economies in order to sustain the tax bases for the political subdivisions which provide services to the citizens of the region.
- (4) On September 16, 1999, Hurricane Floyd struck Eastern North Carolina with severe rains, resulting in flooding of a catastrophic nature, displacing thousands of residents of Eastern North Carolina, and paralyzing these communities and their economies.
- (5) On September 15, 1999, a State of Emergency was declared under G.S. 166A for 26 counties in Eastern North Carolina, with a subsequent declaration of a state of emergency from the President of the United States, allowing North Carolina to receive federal disaster assistance in excess of one billion dollars (\$1,000,000,000).

- (6) Subsequent federal actions have allowed North Carolina to receive additional federal disaster assistance, again in excess of one billion dollars (\$1,000,000,000).
- (7) There remain urgent unmet needs in the affected communities to help the population of Eastern North Carolina, to revitalize the economic base within the communities within this region, and to assist the communities in stabilizing the services needed by the residents.
- (8) In order for economic stability to be recaptured in these North Carolina communities, such aid must take the form of grants and loans to the individuals and small businesses, which are the essence of these communities and, without such assistance, the region might not recover as a vital section of the State.
- (9) We find that the contingency and emergency funds are insufficient to meet the needs of the State to address housing, economic, public health, environment, and local government needs caused by the disaster in Eastern North Carolina communities.

COUNTIES COVERED BY THIS ACT

Section 2.3. Sections 2 through 4.2 of this act apply in the North Carolina counties that were declared a major disaster as a result of Hurricane Floyd by the President of the United States under the Stafford Act (P.L. 93-288).

PART III. THE HURRICANE FLOYD RESERVE FUND

ESTABLISHMENT OF THE HURRICANE FLOYD RESERVE FUND

Section 3. The Governor has established in the Office of State Budget and Management the Hurricane Floyd Reserve Fund. The purpose of this fund is to provide necessary and appropriate relief and assistance from the effects of Hurricane Floyd, consistent with the provisions of this act, in the following areas:

- (1) Required match for federal funds for disaster relief.
- (2) Housing assistance. The General Assembly finds that affected areas may not have adequate rental property to provide housing to those who have been forced from their rental homes. It is the intent of the General Assembly that housing assistance include providing renters with assistance to purchase affordable housing. The General Assembly therefore encourages the Governor to use funds approved by the Council of State for transfer to the Hurricane Floyd Reserve Fund on December 9, 1999, or appropriated to the Fund in this act, to implement a program that provides assistance to renters in affected areas to purchase affordable

housing by providing State resources, including grants and low-interest loans, for that purpose.

- (3) Economic recovery assistance, including, but not limited to, assistance to the agriculture and fishing sectors of the economy.
- (4) Public health, public safety, social services, and environmental recovery issues.
- (5) Support to local governments.

These funds shall remain available to implement the provisions of this act until the General Assembly directs the reversion of the unexpended funds. Regardless of the source of the funds, they shall revert to the Savings Reserve Account at that time.

APPROPRIATIONS TO THE HURRICANE FLOYD RESERVE FUND

Section 3.1.(a) The appropriations and allocations made in this section are for maximum amounts necessary to implement this act. Savings shall be effected where the total amounts appropriated are not required to implement the act.

Section 3.1.(a1) The General Fund availability used in developing this act is as follows:

	1999-2000 (\$ Millions)
Budget Reform Statement	
(01) Ending Unreserved Credit Balance, June 30, 1999	
a. Budgeted (S.L. 1999-237)	260.4
b. Actual	296.7
c. Excess	36.3
(02) Net Revenue Gain by Finance Bills in Excess of Authorized Expenditures as Enacted by the 1999 Regular Session of the General Assembly	4.6
(03) Estimated Unappropriated Balance, June 30, 2000	40.9

Section 3.1.(b) There is appropriated from the General Fund the sum of forty million dollars (\$40,000,000) for the 1999-2000 fiscal year to the Office of State Budget and Management, Hurricane Floyd Reserve Fund, only to support crisis housing assistance to homeowners, renters, and new homeowners, and for any other matters pertaining to relocation.

Section 3.1.(c) Of the funds the General Assembly appropriated for the 1999-2000 fiscal year and previous fiscal years: (i) for the operation and maintenance of State departments, institutions, and agencies, and for other purposes, (ii) for repairs, renovations, and other capital projects, and (iii) other nonrecurring appropriations, the Governor, with the concurrence of the Council of State, may reallocate funds during a state of disaster to the Hurricane Floyd Reserve Fund, as provided in G.S. 166A-6(c)(5). In authorizing the reallocation of appropriated funds under this section, it

is the intent of the General Assembly that, to the extent possible, funds be reallocated in a manner that minimizes reductions in vital services that would otherwise have been provided with these funds. To this end, the General Assembly urges the Governor, the heads of administrative departments of the State, and the Council of State to work to exhaust all other reasonable options prior to utilizing funds for disaster recovery efforts that have otherwise been appropriated to provide direct help to individuals in need of health or long-term care services.

Section 3.1.(d) There is appropriated from the Savings Reserve Account to the Office of State Budget and Management, Hurricane Floyd Reserve Fund, the sum of two hundred eighty-one million four hundred sixty-five thousand, eight hundred twenty-four dollars (\$281,465,824) for the 1999-2000 fiscal year only to support crisis housing assistance to homeowners, renters, and new homeowners, and for any other matters pertaining to relocation. These funds shall remain available to implement the provisions of this act until the General Assembly directs the reversion of the unexpended funds; however, these funds shall remain in the Savings Reserve Account and shall be transferred to the Hurricane Floyd Reserve Fund and expended only after the Director of the Budget certifies that funds from other sources are not adequate to implement the provisions of this act.

Section 3.1.(e) Funds appropriated or reallocated pursuant to this section shall be used only to provide necessary and appropriate relief and assistance from the effects of Hurricane Floyd consistent with the provisions of this act.

Section 3.1.(f) The allocation of funds in the Report of the House Appropriations Committee on Hurricane Floyd Recovery, dated December 15, 1999, are intended as guidance for the Governor. However, notwithstanding Section 4.1 of this act but in accordance with Chapter 166A of the General Statutes, if the Governor determines that allocations should be made to programs other than those set forth in the Committee Report, the Governor shall report to the Joint Legislative Commission on Governmental Operations before implementing any changes in the allocations.

Section 3.1.(g) If up to ten million dollars (\$10,000,000) of funds allocated (other than Direct Housing Assistance) are not needed, the General Assembly directs that it is a top priority to reallocate those funds to provide affordable rental housing assistance.

Section 3.1.(g1) The Director of the Budget shall transfer to the Hurricane Floyd Reserve Fund from the reserve in the budget of the General Assembly the sum of six million six hundred seventy-eight thousand dollars (\$6,678,000). These funds shall come from funds that would have been used for chamber and Legislative Office Building renovations.

The following item shall be construed as an item in the report cited in subsection (f) of this section:

K. Human Resources Services

30. Human Resources Services FY 1999-2000 \$6,678,000 NR
Provides funds to serve needs not met by existing state or anticipated federal funds for critical human services needs for Hurricane Floyd victims, and to mitigate the impact of potential budget reductions within the Department of Health and Human Services on direct services to clients statewide including, but not limited to, mental health, substance abuse services, and developmental disabilities programs.

To account for the changes made by this subsection, the total amount of the Hurricane Floyd Reserve as found in the committee report cited in subsection (f) of this section is increased by adding the \$6,678,000 to the bottom line of the Reserve.

Section 3.1.(h) There is appropriated from the Savings Reserve Account to the Office of State Budget and Management, Hurricane Floyd Reserve Fund, the sum of four million five hundred thousand dollars (\$4,500,000) for the 1999-2000 fiscal year to be held in reserve to be used for solid waste cleanup.

The following item shall be construed as an item in the report cited in subsection (f) of this section:

I. Public Health and Environment

24. Solid Waste Cleanup FY 1999-2000 \$4,500,000 NR
Provides funds for management of solid waste generated by natural disasters and to begin the assessment and remediation of high-risk junkyards and other high-risk solid waste sites in the 100-year floodplains of areas affected by Hurricane Floyd.

Section 3.1.(i) The Governor shall, to the extent practicable, ensure that assistance to victims provided from the Hurricane Floyd Reserve Fund is prioritized towards those areas and individuals least able to afford the losses as a result of Hurricane Floyd.

PART IV. IMPLEMENTATION OF ACT

TEMPORARY RULES AUTHORIZED; AUTHORIZATION APPLIES TO THE NORTH CAROLINA ENVIRONMENTAL POLICY ACT OF 1971

Section 4. The General Assembly finds that the magnitude of the devastation caused by Hurricane Floyd and the urgency of the need for immediate State recovery assistance require expeditious actions by State agencies. Delay could: (i) cause serious and unforeseen threats to the public health, safety, or welfare; (ii) result in the loss of federal revenues for the recovery effort; or (iii) increase the likelihood of fraud and abuse in recovery programs. Therefore, every agency, as defined in G.S. 150B-2, may adopt temporary rules necessary to implement the provisions of this act. Except as provided in this section, temporary rules to implement the provisions of this act shall be adopted as provided in G.S. 150B-21.1. Notwithstanding the provisions of G.S. 150B-21.1(a)(2) and 26 NCAC 2C.0102(11), the authority to adopt temporary rules to implement the provisions of this act shall continue in effect until all rules necessary to implement the

provisions of this act have become effective as either temporary rules or permanent rules. Notwithstanding the provisions of G.S. 150B-21.1(d), a temporary rule adopted to implement the provisions of this act shall specify the date on which the rule will expire and shall continue in effect until that date. Any agency that adopts a temporary rule to implement the provisions of this act shall report the text of the rule and the agency's written statement of its findings of the need for the rule to the Joint Legislative Administrative Procedure Oversight Committee within 30 days of the adoption of the temporary rule. This section applies to the adoption of temporary rules by the Department of Administration under G.S. 113A-11(a) and to the adoption of temporary rules that establish minimum criteria by any State agency, as defined in G.S. 113A-9, under G.S. 113A-11(b).

AUTHORIZATION TO ESTABLISH NEW PROGRAMS, EXPAND EXISTING PROGRAMS, AND MODIFY EXISTING PROGRAMS TO IMPLEMENT THIS ACT

Section 4.1. The Governor may: (i) establish new programs, expand existing programs, and modify existing programs to provide necessary and appropriate relief and assistance from the effects of Hurricane Floyd and (ii) expend funds from the Hurricane Floyd Reserve Fund to implement these programs. These expenditures and programs shall be used only for:

- (1) Required matching funds for federal funds for disaster relief.
- (2) Crisis housing assistance, which may include, but shall not be limited to, direct housing assistance to homeowners and renters, grants to local government for water, sewer, and other infrastructure needs for housing in new areas, predevelopment activities, housing counselors, and housing recovery efforts.
- (3) Economic recovery assistance, including, but not limited to, assistance to the agriculture and fishing sectors of the economy, which may include, but shall not be limited to, small business disaster assistance to small and mid-sized businesses, grants to farmers, and grants and loans to commercial fishers.
- (4) Public health, public safety, social services, and environmental recovery issues which may include, but shall not be limited to, drinking water protection, water quality monitoring, solid waste and hazardous waste cleanup, assessment and remediation of high-risk underground storage tank sites, dam safety, and emergency and maintenance dredging.
- (5) Support to local governments, by grants to local governments to offset revenue losses resulting from storm damage from natural disasters covered by federal disaster declarations as to any storm between September 1, 1999, and the date of enactment of this act. The amount of the grants shall be based on loss of taxable property in the jurisdiction.

AUTHORIZATION TO TRANSFER FUNDS TO FEDERAL AGENCIES AND TO LOCAL GOVERNMENTS

Section 4.2. The Governor may:

- (1) Use funds from the Hurricane Floyd Reserve Fund to match federal funds in accordance with Section 4.1(1) of this act.
- (2) Provide grants to local governments in accordance with Section 4.1(5) of this act.
- (3) Transfer funds to local governments pursuant to cooperative agreements under which they administer programs or provide services on behalf of the State.
- (4) Transfer funds to federal agencies pursuant to cooperative agreements under which they administer agriculture programs or provide services on behalf of the State.

AUTHORIZATION TO ESTABLISH TIME-LIMITED POSITIONS TO IMPLEMENT THIS ACT

Section 4.3. The Governor may establish part-time and full-time personnel positions to implement this act. All such positions shall be time-limited and shall be exempt from the State Personnel Act.

AUTHORIZATION TO ESTABLISH ADVISORY COUNCILS TO ADVISE STATE AGENCIES ON RECOVERY EFFORTS

Section 4.4. The Governor shall establish advisory councils to advise relevant State agencies on Hurricane Floyd recovery efforts and to ensure input from representatives of affected communities and groups.

TAX EXEMPTION

Section 4.5. Each agency disbursing funds or property under Section 4.1 of this act from the Hurricane Floyd Reserve Fund for hurricane relief or assistance, other than payments for goods or services provided by the recipient, shall include with the disbursement a written statement of the State and federal income tax treatment of the funds or property disbursed.

Section 4.6.(a) G.S. 105-134.6(b) is amended by adding the following new subdivision to read:

"(16) The amount paid to the taxpayer during the taxable year from the Hurricane Floyd Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer."

Section 4.6.(b) G.S. 105-130.5(b) is amended by adding the following new subdivision to read:

"(19) To the extent included in federal taxable income, the amount paid to the taxpayer during the taxable year from the Hurricane Floyd Reserve Fund in the Office of State Budget and Management for hurricane relief or

assistance, but not including payments for goods or services provided by the taxpayer."

Section 4.6.(c) This section is effective for taxable years beginning on or after January 1, 1999.

DISASTER COUNTIES TIER RANKINGS

Section 4.7.(a) The Revenue Laws Study Committee shall study the potential consequences of lowering the enterprise area tier designations under G.S. 105-129.3 of counties that sustained severe or moderate damage from a hurricane or a hurricane-related disaster in 1999, according to the Federal Emergency Management Agency. The Committee shall consider the estimated fiscal impact of such a proposal, its effect on the competitiveness of other counties, whether the current law formula for tier designation is responsive to hurricane-related changes in individual counties, and other relevant issues.

Section 4.7.(b) The Committee shall report its findings and recommendations on this issue to the 2000 Regular Session of the 1999 General Assembly.

INVOLVEMENT OF HISTORICALLY UNDERUTILIZED BUSINESSES

Section 4.8. On April 20, 1999, the Governor issued Executive Order No. 150, entitled "Support for Historically Underutilized Businesses". It is the intent of the General Assembly that, during this time of rebuilding and Hurricane Floyd relief efforts, each State agency should strive to increase the total amount of goods and services acquired by it from historically underutilized business vendors, whether directly as principal contractors or indirectly as subcontractors or otherwise.

LEGISLATIVE REVIEW OF FEDERAL FUNDING AND REMAINING UNMET NEEDS

Section 4.9. It is the intent of the General Assembly to review in 2000 and 2001 the funds appropriated by Congress and to consider actions needed to address any remaining unmet needs, especially in the area of rental housing production.

LIMITATION ON USE OF STATE FUNDS

Section 4.10.(a) No State funds used to implement this act, including any funds in the Hurricane Floyd Reserve Fund, may be expended for the construction of any new residence within the 100-year floodplain unless the construction is in an area regulated by a unit of local government pursuant to a floodplain management ordinance, and the construction complies with the ordinance. As used in this section, "100-year floodplain" means any area subject to inundation by a 100-year flood, as indicated on the most recent Flood Insurance Rate Map prepared by the Federal Emergency Management Agency under the National Flood Insurance Program.

Section 4.10.(b) The Environmental Review Commission shall study the costs and benefits of updating the Flood Insurance Rate Map for any area of the State for which the map is more than five years old and of updating all maps on an ongoing basis so that the maps of all areas of the State are no more than five years old. The Environmental Review Commission shall report its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly.

Section 4.10.(c) Homeowners in the 100-year floodplain who receive homeowner's housing assistance pursuant to this act shall have in effect federal flood insurance, if available, as a precondition to receipt of State homeowner's housing assistance for losses resulting from future flooding. As used in this section "100-year floodplain" means that area defined in Section 4.10(a) in this act.

PART V. CREATION OF DISASTER RESPONSE AND RECOVERY COMMISSION

Section 5.(a) Commission Established. -- There is established the Legislative Commission to Address Hurricane Floyd Disaster Relief ("Commission").

Section 5.(b) Membership. -- The Commission shall consist of 21 members as follows:

- (1) Seven members appointed by the Governor.
- (2) Seven members appointed by the Speaker of the House of Representatives.
- (3) Seven members appointed by the President Pro Tempore of the Senate.

Appointments to the Commission shall be made not later than January 15, 2000. A vacancy in the Commission or as chair of the Commission resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made.

Section 5.(c) Duties of Commission. -- The Commission shall study:

- (1) The adequacy of the State's short-term and long-term response to natural disasters under current law and necessary modifications in the State's response to future natural disasters. In the course of this study, the Commission may consider:
 - a. The circumstances under which an extraordinary State response to extraordinarily severe and widespread devastation is appropriate and the components of such an extraordinary State response.
 - b. The need for dedicated sources of funding for disaster recovery.
 - c. The need to modify State policies and amend State laws to mitigate damages in future disasters and to remove administrative obstacles to the recovery effort.

- (2) Short- and long-term recovery efforts for Eastern North Carolina in response to Hurricane Floyd and strategies for supplementing, improving, and enhancing those recovery efforts.
- (3) The causes of the flooding and the extent to which each cause contributed to catastrophic flood damage. In particular, the Commission shall evaluate the effectiveness of dams, dikes, and other flood control structures and determine the extent to which releases of water from dams, dikes, other flood control structures, and locks may have affected the degree of flooding.

Section 5.(d) Consultation. -- The Commission may consult with appropriate State departments, agencies, and board representatives on issues related to its duties.

Section 5.(e) Organization. -- Members of the Commission and its subcommittees shall receive per diem, subsistence, and travel allowances in accordance with G.S. 120-3.1, 138-5, or 138-6, as appropriate.

The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate one member to serve as cochair of the Commission. The cochairs shall call the initial meeting of the Commission on or before February 1, 2000. The Commission shall subsequently meet upon such notice and in such manner as its members determine. A majority of the members of the Commission shall constitute a quorum.

The Commission may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission of the General Assembly, through the Legislative Services Officer, shall assign professional staff to assist the Commission in its work. Upon the direction of the Legislative Services Commission, the Legislative Assistants Directors of the Senate and of the House of Representatives shall assign clerical staff to the Commission. The expenses for clerical employees shall be borne by the Commission.

The Commission may appoint subcommittees of its members and other knowledgeable persons or experts to assist it.

Section 5.(f) Citizen Participation. -- The Commission shall establish a process of citizen participation that assures the citizens of North Carolina of the opportunity to be informed of and contribute to the work of the Commission. It shall hold meetings throughout the State.

Section 5.(g) Cooperation by Government Agencies. -- The Commission may call upon any department, agency, institution, or officer of the State or any political subdivision thereof for facilities, data, or other assistance.

Section 5.(h) Funding. -- The Commission may apply for, receive, and accept grants of non-State funds or other contributions as appropriate to assist in the performance of its duties.

Section 5.(i) Report. -- The Commission shall submit interim reports to the 2000 Regular Session of the 1999 General Assembly

and the 2001 General Assembly and shall submit a final report of its findings and recommendations on May 1, 2002, to the General Assembly, the Governor, and the citizens of the State. The Commission shall terminate upon filing its final report.

PART VI. REPORTING REQUIREMENTS

Section 6. The Governor shall report to the Joint Legislative Commission on Governmental Operations on the implementation of this act on a monthly basis during the third quarter of the 1999-2000 fiscal year and on a quarterly basis thereafter. The Governor shall report more frequently at the request of the Commission.

The Governor shall report by May 1, 2000, the estimated number of citizens who have experienced a reduction in or elimination of health or long-term care services as a result of funds being reallocated in accordance with Section 3.1 of this act. The Governor shall submit the report to: the Joint Legislative Health Care Oversight Commission, the North Carolina Study Commission on Aging, the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services, and the chairs of the Senate Appropriations Committee on Health and Human Services and the House Appropriations Subcommittee on Health and Human Services.

PART VII. EQUALIZATION OF UNEMPLOYMENT INSURANCE WAITING PERIOD FOR ALL UNEMPLOYED FLOOD VICTIMS

Section 7. G.S. 96-13(c) reads as rewritten:

"(c) ~~From January 29, 1975, through February 15, 1977, no week of unemployment for waiting-period credit shall be required of any claimant.~~ Beginning February 16, 1977, an unemployed individual shall be eligible to receive benefits with respect to any week only if the Commission finds that he has been totally, partially, or part-totally unemployed for a waiting period of one week with respect to each benefit year. No week shall be counted as a week of unemployment for waiting-period credit under this provision unless the claimant except for the provisions of this subdivision was otherwise eligible for benefits. As to claims filed on or after September 5, 1999, the waiting period for a benefit year shall not be required of any claimant if all of the following conditions are met:

- (1) The benefits are to be paid for unemployment due directly to a major natural disaster.
- (2) The President of the United States has declared the disaster pursuant to the Disaster Relief Act of 1970, 42 U.S.C.A. 4401, et seq.
- (3) The benefits are to be paid to claimants who would have been eligible for disaster unemployment assistance if they had not been eligible to receive unemployment insurance benefits with respect to that unemployment.

- (4) The claimant files for a waiver of the waiting period week within 30 days after the date of notification or mailing of the notice of the right to have the waiting period week waived. The Employment Security Commission, for good cause shown, may at any time in its discretion, with or without motion or notice, order the period enlarged if the request for an enlargement of time is made before the expiration of the period originally prescribed or as extended by a previous order. After expiration of the specified period, the Employment Security Commission may permit the act to be done where the failure to act was a result of excusable neglect.

The benefits paid as a result of the waiver of the waiting period week shall not be charged to the account or accounts of the base period employer or employers in accordance with G.S. 96-9(c)(2)d. The Employment Security Commission shall implement regulations prescribing the procedure for the waiver of the waiting period week in accordance with G.S. 96-4(b)."

PART VIIA. FLEXIBILITY IN THE SCHOOL CALENDAR TO ACCOMMODATE EXTRAORDINARY CIRCUMSTANCES

Section 7A.(a) G.S. 115C-84.2(a)(1) reads as rewritten:

"(a) School Calendar. -- Each local board of education shall adopt a school calendar consisting of 220 days all of which shall fall within the fiscal year. A school calendar shall include the following:

- (1) A minimum of either 180 days and or 1,000 hours of instruction covering at least nine calendar months. The local board shall designate when the 180 instructional days shall occur. The number of instructional hours in an instructional day may vary according to local board policy and does not have to be uniform among the schools in the administrative unit. Local boards may approve school improvement plans that include days with varying amounts of instructional time. If school is closed early due to inclement weather, the day and the scheduled amount of instructional hours may count towards the required minimum to the extent allowed by State Board policy. The school calendar shall include a plan for making up days and instructional hours missed when schools are not opened due to inclement weather."

Section 7A.(b) This section applies only to local school administrative units located in whole or in part in the 66 counties that were declared by the President of the United States to be a disaster area for Hurricane Floyd.

Section 7A.(c) This section becomes effective August 15, 1999, and expires August 15, 2000.

Section 7A.(d) This section may be codified by the Revisor of Statutes as G.S. 115C-84.2(a)(1a).

PART VIII. LIMITATIONS AND EFFECTIVE DATE

Section 8. Funds loaned to small and mid-sized businesses, described in item F. 14 of the Report of the House Appropriations Committees on Hurricane Floyd Recovery cited in Section 3.1(f) of this act, shall be used only for eligible purposes under the Small Business Administration disaster assistance loan program. Payments for economic losses shall be limited to documented business expenses necessary for the continued operation of the business.

Section 9. This act is effective when it becomes law, except that Sections 3.1(c), 4, 4.1, 4.2, and 7 become effective September 1, 1999, and except that Section 4.6 of this act is effective for taxable years beginning on or after January 1, 1999.

In the General Assembly read three times and ratified this the 16th day of December, 1999.

Became law upon approval of the Governor at 4:00 p.m. on the 16th day of December, 1999.

RESOLUTIONS

REGULAR SESSION 1999

S.J.R. 11

RESOLUTION 1

A JOINT RESOLUTION INFORMING HIS EXCELLENCY, GOVERNOR JAMES B. HUNT, JR., THAT THE GENERAL ASSEMBLY IS ORGANIZED AND READY TO PROCEED WITH PUBLIC BUSINESS AND INVITING THE GOVERNOR TO ADDRESS A JOINT SESSION OF THE SENATE AND HOUSE OF REPRESENTATIVES.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. A committee of five Senators appointed by the President Pro Tempore of the Senate and five Representatives appointed by the Speaker of the House of Representatives shall notify His Excellency, Governor James B. Hunt, Jr., that the General Assembly is organized and is ready to proceed with public business and to invite him to address a joint session of the Senate and House of Representatives in the Hall of the House of Representatives at 7:00 p.m., Monday, February 1, 1999.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of January, 1999.

S.J.R. 53

RESOLUTION 2

A JOINT RESOLUTION HONORING THE MEMORY OF PLATT D. WALKER, THE FIRST PRESIDENT OF THE NORTH CAROLINA BAR ASSOCIATION, ON THE ONE HUNDREDTH ANNIVERSARY OF THE NORTH CAROLINA BAR ASSOCIATION.

Whereas, the North Carolina Bar Association was founded on February 10, 1899, by a group of 62 lawyers, who convened in Raleigh at the North Carolina Supreme Court; and

Whereas, Platt D. Walker was elected the first President on February 10, 1899 at the first organizational meeting of the Association; and

Whereas, the Association was organized to promote the administration of justice throughout the State, advance the science of jurisprudence, maintain the standard of honor in the profession, and establish cordial intercourse among the members; and

Whereas, the 1899 General Assembly enacted a statute on March 6, 1899, incorporating and bestowing upon the Association legal status as a recognized professional association within the State; and

Whereas, the Association held its first annual meeting July 5-7, 1899, in Morehead City, with 114 lawyers in attendance; and

Whereas, since its formation, the Association has used its resources to support lawyers and local Bar organizations throughout North Carolina; and

Whereas, the Association has enhanced the quality of life for all citizens of the State and advanced the public confidence in the legal profession; and

Whereas, many lawyers serving our State in the General Assembly and its leadership have been members of the Association; and

Whereas, during its 100 years of service, the Association has been instrumental in providing leadership and encouraging the highest standards of integrity, competence, civility, and well-being of all members of the legal profession; and

Whereas, the goals of the Association during the celebration of its centennial are:

- (1) To inspire lawyers to the highest ideals of professionalism and service.
- (2) To foster and protect the fundamental role of lawyers to sustain the rule of law in our free society.
- (3) To challenge all citizens to strengthen our system of justice for the 21st century.
- (4) To assist the General Assembly in its important duty of enacting sound legislation for the betterment of all North Carolinians through drafting, and research and as a resource; and

Whereas, it is only fitting that the Association be commended for its 100 years of continuous service; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the life and memory of Platt D. Walker and expresses appreciation for the contributions he made to the North Carolina Bar Association. The General Assembly recognizes the historic accomplishments of the North Carolina Bar Association and congratulates the organization on 100 years of

dedicated commitment to serve the public and the legal profession by promoting the administration of justice and encouraging the highest standards of integrity, competence, civility, and well-being of all members of the profession. The General Assembly further wishes to thank the volunteers and staff who have contributed to the growth and development of this distinguished Association.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to the President of the North Carolina Bar Association.

Section 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of February, 1999.

S.J.R. 32

RESOLUTION 3

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF ROBERT KOGER MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, a vacancy has occurred on the North Carolina Utilities Commission because of the resignation of Allyson K. Duncan; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the name of his appointee to serve the remainder of the unexpired term on the North Carolina Utilities Commission of Allyson K. Duncan, which will expire June 30, 1999; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointment of Robert Koger to the North Carolina Utilities Commission for a term to expire June 30, 1999, is confirmed.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of March, 1999.

S.J.R. 403

RESOLUTION 4

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF TERRY SANFORD, ONE OF NORTH CAROLINA'S MOST DISTINGUISHED CITIZENS.

Whereas, Terry Sanford was born on August 20, 1917, in Laurinburg, North Carolina, to Cecil L. Sanford and Elizabeth Martin Sanford; and

Whereas, Terry Sanford earned an A.B. degree in 1939 and a law degree in 1946 from the University of North Carolina at Chapel Hill; and

Whereas, Terry Sanford served as a Special Agent of the FBI from 1941 until 1942 when he enlisted in the United States Army; and

Whereas, Terry Sanford served in the 501st Parachute Infantry Regiment and the 517th Parachute Combat Team from 1943 to 1945, seeing action in five European Campaigns, and was awarded the Bronze Star and Purple Heart; and

Whereas, Terry Sanford served as assistant director of the Institute of Government at the University of North Carolina at Chapel Hill from 1946 to 1948; and

Whereas, Terry Sanford engaged in the practice of law as a partner in the law firms of Rose and Sanford from 1949 to 1957; Sanford, Phillips, McCoy and Weaver from 1958 to 1960; Sanford, Adams, McCullough and Beard from 1965 to 1986; and Sanford and Holshouser from 1993 to 1998; and

Whereas, Terry Sanford showed a keen interest in political affairs throughout his life, ably rendering distinguished service to the State of North Carolina as a member of the State Senate from 1952 to 1954, as Governor from 1960 to 1964, and as a member of the United States Senate from 1986 to 1992; and

Whereas, Terry Sanford's other political pursuits included serving as President of the North Carolina Young Democrats in 1949, manager of Kerr Scott's successful campaign for the United States Senate in 1954, a delegate to the Democratic National Convention in 1956, chair of the Southern Regional Education Board from 1961 to 1963, and national chair of Hubert H. Humphrey's campaign for President in 1968; and

Whereas, Terry Sanford sought the Democratic nomination for President of the United States in 1972, and began another campaign for President in 1974, but withdrew two years later; and

Whereas, Terry Sanford served as President of Duke University from 1970 to 1985, during which time the Medical Center doubled its capacity, the Fuqua School of Business was constructed, and the university endowment increased from \$70 million to \$200 million; and

Whereas, Terry Sanford was instrumental in helping to establish the State's Community College System, creating the North Carolina School of the Arts, starting the Governor's School, and founding the Learning Institute of North Carolina; and

Whereas, Terry Sanford was the author of several books including But What About the People?, Storm Over the States, and Outlive Your Enemies; and

Whereas, in 1981, a Harvard University study ranked Terry Sanford as one of the nation's top 10 governors of the 20th century; and

Whereas, Terry Sanford was active in various organizations and associations, some of which included the Veterans of Foreign Wars,

Shriners, Masons, Fayetteville Chamber of Commerce, Fayetteville Red Cross, and the Children's Home Society of North Carolina; and

Whereas, Terry Sanford died on April 18, 1998; and

Whereas, Terry Sanford was a devoted husband to his beloved wife, the former Margaret Rose Knight, a loving father to his children, Terry Sanford Jr. and Betsee Sanford, and a doting grandfather to his grandchildren; and

Whereas, Terry Sanford will be remembered for his many contributions to the State of North Carolina; and

Whereas, the General Assembly wishes to show its appreciation for his life and accomplishments and extend its sincere sympathy to his family; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly expresses high esteem and regard for the extraordinary life and service of Terry Sanford and mourns the loss of one of North Carolina's most distinguished and respected citizens.

Section 2. The General Assembly extends its sincere sympathy to the family of Terry Sanford for the loss of a beloved husband, father, grandfather, and friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Terry Sanford.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of March, 1999.

S.J.R. 78

RESOLUTION 5

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENT OF HAL D. LINGERFELT AS COMMISSIONER OF BANKS.

Whereas, under the provisions of G.S. 53-92, appointment by the Governor of the Commissioner of Banks is subject to confirmation by the General Assembly by joint resolution; and

Whereas, the term of the present Commissioner of Banks will end on March 31, 1999; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate the name of his appointee to fill the term of Commissioner of Banks which will begin April 1, 1999, and expire March 31, 2003; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointment of Hal D. Lingerfelt as Commissioner of Banks for a term to expire March 31, 2003, is confirmed.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of March, 1999.

S.J.R. 913

RESOLUTION 6

A JOINT RESOLUTION INVITING THE HONORABLE BURLEY B. MITCHELL, JR., CHIEF JUSTICE OF THE SUPREME COURT, TO ADDRESS A JOINT SESSION OF THE HOUSE OF REPRESENTATIVES AND THE SENATE.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Honorable Burley B. Mitchell, Jr., Chief Justice of the Supreme Court, is invited to address a joint session of the House of Representatives and the Senate in the Hall of the House of Representatives at 7:00 p.m., Monday, April 19, 1999.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to Burley B. Mitchell, Jr.

Section 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of April, 1999.

S.J.R. 416

RESOLUTION 7

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF SAMUEL ASHE FOR WHOM ASHE COUNTY IS NAMED UPON THE COUNTY'S BICENTENNIAL CELEBRATION.

Whereas, Ashe County was formed from Wilkes County in May of 1799; and

Whereas, Ashe County was named for Samuel Ashe who was a revolutionary patriot, superior court judge, and Governor of North Carolina from 1795 to 1798; and

Whereas, Ashe County is known for its beautiful scenic environment, agriculture and livestock, and dairy, furniture, electronic, mineral, and textile products; and

Whereas, the citizens of Ashe County have been actively preparing for the County's bicentennial celebration; and

Whereas, Ashe County's bicentennial celebration is worthy of celebration and should be enjoyed and supported by all of North Carolina's citizens; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the life and memory of Samuel Ashe and urges the citizens of this State to participate in activities commemorating the 200th anniversary of Ashe County.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to the Chair of the Ashe County Board of Commissioners.

Section 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of May, 1999.

S.J.R. 975

RESOLUTION 8

A JOINT RESOLUTION PROVIDING FOR THE CONFIRMATION OF THE APPOINTMENT OF SAMUEL JAMES ERVIN, IV MADE BY THE GOVERNOR TO MEMBERSHIP ON THE NORTH CAROLINA UTILITIES COMMISSION.

Whereas, under the provisions of G.S. 62-10, appointments made by the Governor to membership on the North Carolina Utilities Commission are subject to confirmation by the General Assembly by joint resolution; and

Whereas, the Governor has submitted to the presiding officers of the House of Representatives and the Senate, the name of his appointee to serve a full term on the North Carolina Utilities Commission; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointment of Samuel James Ervin, IV to the North Carolina Utilities Commission for a term beginning on July 1, 1999, and expiring on July 1, 2007, is confirmed.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of May, 1999.

S.J.R. 795

RESOLUTION 9

A JOINT RESOLUTION SETTING THE DATE FOR THE HOUSE OF REPRESENTATIVES AND SENATE TO ELECT MEMBERS TO THE STATE BOARD OF COMMUNITY COLLEGES.

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. Pursuant to G.S. 115D-2.1(b)(4)f., the Senate and the House of Representatives shall elect members to the State Board of Community Colleges during the regular sessions of the two chambers held on Wednesday, May 26, 1999. At that time the Senate shall elect one member to the State Board for a term of six years beginning July 1, 1999; the House of Representatives shall elect one member to the State Board for a term of six years beginning July 1, 1999.

Section 2. Each chamber shall follow the procedure set out in G.S. 115D-2.1 for the nomination and election of members of the State Board.

Section 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of May, 1999.

H.J.R. 1068

RESOLUTION 10

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF DR. EDMUND STRUDWICK, THE FIRST PRESIDENT OF THE NORTH CAROLINA MEDICAL SOCIETY, ON THE SOCIETY'S ONE HUNDRED FIFTIETH ANNIVERSARY.

Whereas, on April 16, 1849, physicians from eight counties met at the North Carolina Supreme Court to organize the "Medical Society of the State of North Carolina", now known as the "North Carolina Medical Society"; and

Whereas, on April 17, 1849, Dr. Edmund Strudwick was elected as the first president of the Medical Society of the State of North Carolina; and

Whereas, the North Carolina Medical Society is celebrating the 150th anniversary of its inception; and

Whereas, the North Carolina Medical Society has worked throughout its existence to advance the art and science of medicine and to unite, serve, and represent physicians in order to enhance physician advocacy for their patients and improve the health of the people of North Carolina; and

Whereas, the North Carolina Medical Society has sought to elevate the standards of medical education and service so that the medical profession can become more capable within itself, more useful in the prevention and cure of disease, and more effective in prolonging and adding comfort to life; and

Whereas, the North Carolina Medical Society has unflaggingly pursued its mission of excellence in medicine through advocacy for medical research, clinical care and education so that the medical profession continues to evolve as a highly specialized and capable profession; and

Whereas, the North Carolina Medical Society has worked consistently to inform the public of the problems of medical care and public health, and has worked cooperatively with the members of the General Assembly to address important health problems and assure responsible health laws are enacted; and

Whereas, the physicians of North Carolina are deeply grateful for the privilege to serve the people of this great State and pledge to continue their work individually and through the North Carolina Medical Society to improve our health care system; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the life and memory of Dr. Edmund Strudwick and expresses appreciation for the contributions he made to the State of North Carolina and to the North Carolina Medical Society. The General Assembly recognizes the historical accomplishments of the North Carolina Medical Society and congratulates the organization on 150 years of dedicated commitment to improve the health of North Carolinians and to advance the art and

science of medicine by promoting high standards of scientific rigor and professional competence in our health care system.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to the President of the North Carolina Medical Society.

Section 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of May, 1999.

H.J.R. 1251

RESOLUTION 11

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF KENNETH R. WILLIAMS, ONE OF WINSTON-SALEM'S MOST PROMINENT CITIZENS.

Whereas, Kenneth R. Williams was born on August 16, 1912, in Norfolk, Virginia, to Kenneth R. Williams and Vandelia Perry Williams; and

Whereas, Kenneth R. Williams grew up in Winston-Salem, attended the public schools, and graduated from Columbian Heights High School in 1928; and

Whereas, Kenneth R. Williams earned a bachelors degree in history from Morehouse College and both a masters and doctorate degree from Boston University; and

Whereas, in 1936, Kenneth R. Williams joined the faculty of Winston-Salem Teachers College, now Winston-Salem State University, where he taught history until 1937; and

Whereas, from 1937 to 1939, Kenneth R. Williams taught at the Palmer Memorial Institute in Sedalia, North Carolina; and

Whereas, in 1938, Kenneth R. Williams married Edythe Williams and to this union three sons, Kenneth, Ronald, and Norman, were born; and

Whereas, Kenneth R. Williams served his country during World War II as a Chaplain in the United States Army. He began his tour of duty with the rank of first lieutenant and ended it with the rank of major; and

Whereas, after his service in the army, Kenneth R. Williams returned to Winston-Salem State University where he was a history professor, a chaplain, the James A. Gray Professor of Religion, and the Dean of Men from 1946 to 1960; and

Whereas, as a result of the social and racial tensions in Winston-Salem and the subsequent unionization of the predominantly African-American workforces at R.J. Reynolds Tobacco Company, Local Union # 22 was formed. In the aftermath, of the 1944 Smith v. Allwright court decision outlawing the all-white voting primary, Local Union # 22's voter registration campaign increased the number of African-American voters in Winston-Salem from 300 to 3,000 in a two-year period; and

Whereas, in 1947, Kenneth R. Williams was elected as Winston-Salem's first African-American alderman; and

Whereas, Kenneth R. Williams served as an alderman from 1947 to 1951; and

Whereas, Kenneth R. Williams was appointed as executive vice-president of Winston-Salem State University in February 1961, as interim president in July 1961, and as president in 1962; and

Whereas, in 1963, Kenneth R. Williams was sponsored by the United States Department of State and the American Association of Colleges for Teacher Education to travel to Poland to study Polish institutions of higher education; and

Whereas, in 1972, Winston-Salem State University became part of The University of North Carolina System and Kenneth R. Williams was named Chancellor, a position he held until his retirement in 1977; and

Whereas, Kenneth R. Williams was honored by Winston-Salem State University in 1975 when the 1,800-seat auditorium was named in his honor on campus; and

Whereas, in 1978, Kenneth R. Williams was named Chancellor Emeritus by the Winston-Salem State University Board of Trustees; and

Whereas, during Kenneth R. Williams' successful tenure at Winston-Salem State University, he began the business administration program, brought the nursing and teacher education programs to prominence, and created the Division of Student Affairs. He also established the R. J. Reynolds Scholars Program in 1970, which increased the pool of talented African-American students at the university; and

Whereas, Kenneth R. Williams was a deeply religious man, serving as pastor of First Institution Baptist Church in Winston-Salem from 1937 to 1948 and as pastor of the West End Baptist Church in Winston-Salem from 1949 to 1960; and

Whereas, Kenneth R. Williams was a devoted public servant, serving on numerous boards, commissions, and civic organizations, including the North Carolina Parole Board, Forsyth County Mental Health Association, Winston-Salem School Board, Library Board, Winston-Salem Hospital Commission, North Carolina Battleship Commission Board, Winston-Salem Urban League, National Council of Accreditation for Teacher Education, American Association of Colleges for Teacher Education Board, Winston-Salem Red Cross Board, Middle District Court of North Carolina Naturalization Committee, Board of Fellows of Gallaudet College, Northwestern Bank Board of Directors, and Board of Directors of Hospice of Winston-Salem and Forsyth County, Inc.; and

Whereas, Kenneth R. Williams received numerous awards and honors, including the Freedom Foundation Award and honorary doctorate degrees from Morehouse College, Wake Forest University, and Southern Illinois University; and

Whereas, Kenneth R. Williams was included in Who's Who in America, Who's Who in American Colleges and Universities, and Personalities of the South; and

Whereas, Kenneth R. Williams died on December 31, 1989, and is survived by his wife, Edythe Williams, and two sons, Norman Williams and Ronald Williams; and

Whereas, with the death of Kenneth R. Williams, his family, Forsyth County, and the State of North Carolina lost a good friend and colleague and an admired and truly distinguished citizen; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly expresses its deep appreciation for the life and accomplishments of Kenneth R. Williams and for the devoted and tireless service he rendered to Winston-Salem State University, the State of North Carolina, and his community.

Section 2. The General Assembly extends its deepest sympathy to the family and friends of Kenneth R. Williams for the loss of their loved one.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Kenneth R. Williams.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1999.

S.J.R. 464

RESOLUTION 12

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF WADE BOSTIC MATHENY, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, Wade Bostic Matheny was born on January 26, 1905, to John W. Matheny and Arrie Kennedy Matheny in Forest City, North Carolina; and

Whereas, Wade Bostic Matheny graduated from Forest City High School in 1924, Wake Forest University in 1928, and the Law School at the University of North Carolina at Chapel Hill in 1932; and

Whereas, Wade Bostic Matheny had an expansive career, serving as a high school teacher, attorney, and businessman; and

Whereas, Wade Bostic Matheny was a devoted public servant, serving as President of the Rutherford County Bar Association, as Rutherford County's Solicitor and Prosecuting Attorney, and also as a District Court Judge; and

Whereas, Wade Bostic Matheny was a member of several fraternal and civic organizations including the Knights of Pythias, the Rutherford County Chamber of Commerce, and the Forest City Kiwanis Club, and served as Secretary of the Broad River Soil Conservation District; and

Whereas, Wade Bostic Matheny was honored by the Chamber of Commerce with a plaque for community service and twice awarded by the Kiwanis Club for distinguished service; and

Whereas, as a member of the local school board, Wade Bostic Matheny chaired a committee to solicit support for an Industrial Education Center to train high school dropouts; and

Whereas, this center was established in Avondale in 1961 and was the beginning of Iso Thermal Community College; and

Whereas, Wade Bostic Matheny served with honor and distinction as a member of the North Carolina Senate from 1941 through 1946; and

Whereas, while a member of the General Assembly, Wade Bostic Matheny sponsored a bill to provide financial support for a health department in every county in the State, granting every adult and child access to medical care regardless of ability to pay; and

Whereas, Wade Bostic Matheny was a member of the First Baptist Church in Forest City for 63 years, serving as a deacon and Bible Class teacher; and

Whereas, Wade Bostic Matheny was respected and admired by his community; and

Whereas, Wade Bostic Matheny was a loving husband and devoted father and grandfather; and

Whereas, Wade Bostic Matheny died on December 2, 1998; and

Whereas, Wade Bostic Matheny is survived by his wife, Eleanor Calhoun Matheny, a daughter, Alice Matheny Lancaster, a son, David W. Matheny, and a number of grandchildren; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the life and memory of Wade Bostic Matheny and expresses gratitude and appreciation for the service he rendered to his community and State.

Section 2. The General Assembly expresses its sincere sympathy to the family and friends of Wade Bostic Matheny.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Wade Bostic Matheny.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1999.

H.J.R. 150

RESOLUTION 13

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF L.W. LOCKE, FORMER MEMBER OF THE GENERAL ASSEMBLY.

Whereas, L.W. Locke was born in Enfield, North Carolina on November 25, 1934, to Lorenza Locke and Anna Harper Locke; and

Whereas, L.W. Locke graduated from Enfield High School in 1952 and North Carolina State University in 1956, receiving a B.S. degree in Agricultural Engineering; and

Whereas, L.W. Locke married Charlotte E. Cooper on December 22, 1956, and was the father of three daughters, Beverly, Phyllis and Audrey; and

Whereas, L.W. Locke proudly served his country as a member of the United States Army from 1957 to 1964 and also served as a reserve in the North Carolina National Guard; and

Whereas, L.W. Locke was successful in business, serving as President and CEO of Eastern Petroleum Corporation for over 40 years and as Secretary/Treasurer and Co-Owner of New Dixie Oil Corporation; and

Whereas, L.W. Locke donated his time and expertise to his profession and community by serving in numerous organizations, including the North Carolina LP-Gas Association, North Carolina Petroleum Marketers Association, the Halifax-Roanoke LP Gas Association, Enfield Lions Club, North Carolina State University Alumni Association, Enfield Chamber of Commerce, Enfield Development Corporation, and the Enfield Optimist Club; and

Whereas, L.W. Locke was a member of several boards and commissions, often serving in leadership roles, including the North Carolina Petroleum Marketers Association, the Petroleum Marketers Education Foundation, the Petroleum Marketers Association of America, the Executive and EPA and OSHA Task Force Committees of the National Oil Jobbers Council, Centura Bank Local Board, Enfield Savings Bank, Halifax Memorial Hospital, Enfield Red Cross Board, Enfield Educational Foundation, Enfield Academy, the Advisory Board at Meredith College, and North Carolina State University's Athletic Council; and

Whereas, L.W. Locke was named the Outstanding Young Man of America in 1972 and was awarded the Phillips Petroleum Company's Mr. Phil Service Award in 1968 and the North Carolina Petroleum Marketers Association's William A. Parker Memorial Service Award in 1982; and

Whereas, L.W. Locke served with honor and distinction in the North Carolina House of Representatives during the 1995-96 Session of the General Assembly; and

Whereas, L.W. Locke was a devoted and active member of the Enfield United Methodist Church, serving as Chair of the Board of Trustees and the Parsonage Building Fund, and as a member of the Finance Committee; and

Whereas, L.W. Locke died on May 22, 1998, bringing an end to his long and constructive life; and

Whereas, L.W. Locke is survived by his wife, Charlotte, their daughters, and eight grandchildren; and

Whereas, it is the desire of the General Assembly to take note of L.W. Locke's achievements and pay tribute to his life and service rendered; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the life and memory of L.W. Locke and expresses appreciation for the service he rendered to his community, the State of North Carolina, and the United States.

Section 2. The General Assembly expresses its deepest sympathy to the family of L.W. Locke for the loss of a beloved husband, father, grandfather, and friend.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of L.W. Locke.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of June, 1999.

H.J.R. 76

RESOLUTION 14

A JOINT RESOLUTION HONORING THE MEMORY OF JOHN REED ON THE BICENTENNIAL OF AMERICA'S FIRST GOLD DISCOVERY.

Whereas, John Reed, a Hessian soldier of the American Revolution who fled the British army, took up farming in present-day Cabarrus County; and

Whereas, in 1799 his 12-year-old son Conrad discovered a small wedge-shaped rock that weighed an estimated 17 pounds; and

Whereas, that find was the first authenticated discovery of gold north of Mexico and initiated the first gold rush in America; and

Whereas, during the next half century North Carolina played a leading role in gold mining, this activity reaching from the mountains to the coastal plain and employing thousands of North Carolinians; and

Whereas, the Bechtler family established the nation's first private mint in Rutherford County; and

Whereas, all of the native gold minted in the United States prior to 1828 came from the Old North State; and

Whereas, the United States government established a branch mint in Charlotte in 1837; and

Whereas, before 1849 North Carolina produced more gold than any state in the Union; and

Whereas, Canada and Alaska are commemorating the centennial of the Klondike gold rush; and

Whereas, the state of California is commemorating the sesquicentennial of the California gold rush; and

Whereas, North Carolina needs to reassert its primacy in the history of gold in America; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of John Reed and calls upon all North Carolinians to observe, celebrate, and participate in events commemorating the bicentennial of the discovery

of gold at the Reed Gold Mine State Historic Site and the importance of gold in the history of the State and nation.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of June, 1999.

S.J.R. 470

RESOLUTION 15

A JOINT RESOLUTION PROVIDING FOR A JOINT SESSION OF THE GENERAL ASSEMBLY TO ACT ON A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS BY THE GOVERNOR OF NEW MEMBERS TO THE STATE BOARD OF EDUCATION.

Whereas, under the provisions of the Constitution of North Carolina and G.S. 115C-10, appointments by the Governor to membership on the State Board of Education are subject to confirmation by the General Assembly in joint session; and

Whereas, vacancies have occurred on the State Board of Education; and

Whereas, the Governor has transmitted to the presiding officers of the Senate and the House of Representatives the names of his appointees to fill the terms of membership on the State Board of Education which expire March 31, 2007; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. Upon the call of the President Pro Tempore of the Senate and the Speaker of the House of Representatives, the General Assembly shall meet in joint session to act on a joint resolution providing for confirmation of the appointments by the Governor of new members to the State Board of Education.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1999.

H.J.R. 1486

RESOLUTION 16

A JOINT RESOLUTION COMMEMORATING JUNETEENTH AND HONORING THE MEMORY OF THE HUNDREDS OF THOUSANDS OF AFRICAN-AMERICANS WHO WERE ENSLAVED IN THIS COUNTRY.

Whereas, on June 19, 1865, two and a half years after the Emancipation Proclamation was signed by President Abraham Lincoln, news that slavery had been abolished reached the state of Texas; and

Whereas, former slaves in Texas began to observe June 19 as the anniversary of their emancipation and coined the term "Juneteenth"; and

Whereas, as these former slaves and their descendants began to migrate, Juneteenth celebrations were held throughout the nation; and

Whereas, for more than 130 years, Juneteenth has been commemorated annually and the number of people participating in the event has grown; and

Whereas, in 1998, the United States Senate passed a resolution encouraging the annual observance of June 19 as Juneteenth Independence Day; and

Whereas, the historical significance of Juneteenth is worthy of recognition and celebration; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly honors the memory of the hundreds of thousands of African-Americans who were enslaved in this country and encourages the people of this State to actively participate in Juneteenth celebrations.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1999.

S.J.R. 469

RESOLUTION 17

A JOINT RESOLUTION PROVIDING FOR CONFIRMATION OF THE APPOINTMENTS OF EDGAR DAVID MURPHY, III AND JANE P. NORWOOD TO MEMBERSHIP ON THE STATE BOARD OF EDUCATION.

Whereas, under the provisions of the Constitution of North Carolina and G.S. 115C-10, appointments by the Governor to membership on the State Board of Education are subject to confirmation by the General Assembly in joint session; and

Whereas, vacancies have occurred on the State Board of Education; and

Whereas, the Governor has transmitted to the presiding officers of the Senate and the House of Representatives the names of his appointees to fill the terms of membership on the State Board of Education which expire March 31, 2007; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The appointments of Edgar David Murphy, III and Jane P. Norwood to membership on the State Board of Education for terms to expire March 31, 2007, are confirmed.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of June, 1999.

S.J.R. 1139

RESOLUTION 18

A JOINT RESOLUTION DEDICATING PROPERTIES AS PART OF THE STATE NATURE AND HISTORIC PRESERVE.

Whereas, Article XIV, Section 5 of the North Carolina Constitution, authorizes the dedication of State and local government properties as part of the State Nature and Historic Preserve upon acceptance by resolution adopted by a vote of three-fifths of the members of each house of the General Assembly and the removal of properties from that Preserve by law adopted by three-fifths of the members of each house of the General Assembly; and

Whereas, the General Assembly enacted the State Nature and Historic Preserve Dedication Act, Chapter 443, 1973 Session Laws, to prescribe the conditions and procedures under which properties may be specifically dedicated for the purposes enumerated by Article XIV, Section 5 of the North Carolina Constitution; and

Whereas, in accordance with G.S. 143-260.8, the Council of State has petitioned the General Assembly to adopt a resolution pursuant to Article XIV, Section 5 of the North Carolina Constitution, accepting properties added to the State Parks System since the last dedication of lands on May 29, 1989, and designated in the petition for inclusion in the State Nature and Historic Preserve; and

Whereas, one component of the State Parks System and various State Historic Sites properties, some of which remain unchanged in land mass and some of which have acquired additional land, have different names since they were dedicated to the State Nature and Historic Preserve; and

Whereas, the Council of State has petitioned the General Assembly to remove certain properties from the State Nature and Historic Preserve; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly dedicates and accepts all the following lands and waters to constitute components of the State Nature and Historic Preserve as named or renamed:

- (1) All lands and waters within the boundaries of the following units of the State Parks System as of April 6, 1999: Baldhead Island State Natural Area, Bushy Lake State Natural Area, Cliffs of the Neuse State Park, Duke Power State Park, Goose Creek State Park, Hammocks Beach State Park, Hemlock Bluffs State Natural Area, Jockey's Ridge State Park, Lake James State Park, Lake Waccamaw State Park, Lumber River State Park, Medoc Mountain State Park, Merchants Millpond State Park, Mitchells Millpond State Natural Area, Mount Mitchell State Park, Oconeechee Mountain State Natural Area, Pettigrew State Park, Pilot Mountain State Park, Raven Rock State Park,

Run Hill State Natural Area, and Weymouth Woods-Sandhills Nature Preserve.

- (2) All lands and waters within the boundaries of William B. Umstead State Park as of April 6, 1999, with the exception of Tract Number 65, containing 22.93140 acres as shown on a survey prepared by John S. Lawrence (RLS) and Bennie R. Smith (RLS), entitled "Property of The State of North Carolina William B. Umstead State Park", dated January 14, 1977 and filed in the State Property Office, which was removed from the State Nature and Historic Preserve by Chapter 450, Section 1 of the 1985 Session Laws.
- (3) All land within the boundaries of Crowders Mountain State Park as of April 6, 1999, with the exception of the following tract: The portion of that certain tract or parcel of land at Crowders Mountain State Park in Gaston County, Crowders Mountain Township, described in Deed Book 1939, page 800, and containing 757.28 square feet and as shown in a survey by Tanner and McConnaughey, P.A. dated July 22, 1988 and filed in the State Property Office.
- (4) All lands owned in fee simple by the State at the New River Scenic River as of April 6, 1999, with the exception of the following tract: That certain tract or parcel of land at the New River Scenic River in Alleghany County, Piney Creek Township, described in Deed Book 112, page 610, containing 16.54 acres, and consisting of lots #12 through #19 on the survey by Dudley and Zeh, R.L.S. dated September 21, 1979, recorded in Plat Book 4, Page 94, and filed in the State Property Office.
- (5) All lands and waters within the boundaries of Stone Mountain State Park as of April 6, 1999, with the exception of the following tract: The portion of that certain tract or parcel of land at Stone Mountain State Park in Wilkes County, Traphill Township, described as parcel 33-02 in Deed Book 633-193, and more particularly described as all of the land in this parcel lying to the west of the eastern edge of the Air Bellows Road, as shown on the National Park Service Land Status Map 33 dated March 24, 1981 and filed in the State Property Office, containing approximately 72 acres.
- (6) All lands and waters located within the boundaries of Eno River State Park as of April 6, 1999, with the exception of the following tracts: The portion of that tract or parcel of land at Eno River State Park in Durham County, Lebanon Township, described in Deed Book 1626, Page 854, required for the right-of-way and easements for the expansion of Guess Road and more particularly described in a Department of Transportation drawing entitled "Sketch Showing a Portion of the Property of State of North

Carolina, North Carolina Parks and Recreation, Durham County", for TIP U-2102, Project 8.1351302, parcel 155, dated June 8, 1999 and filed in the State Property Office; and the portion of that tract or parcel of land at Eno River State Park in Durham County, Lebanon Township, described in Deed Book 1945, Page 773, required for the right-of-way and easements for the expansion of Guess Road and more particularly described in a Department of Transportation drawing entitled "Sketch Showing Proposed Right of Way, Property of State of North Carolina (Formerly Association for the Preservation of the Eno), Durham County" for TIP U-2102, Project 8.1351302, parcels 159 and 163, dated June 1, 1999 and filed in the State Property Office.

- (7) All lands and waters located within the boundaries of Hanging Rock State Park as of April 6, 1999, with the exception of the following tract: The portion of that tract or property at Hanging Rock State Park in Stokes County, Danbury Township, described in Deed Book 360, Page 160, for a 30-foot wide right-of-way beginning approximately 183 feet south of SR 1001 and extending in a southerly direction approximately 1,479 feet to the southwest corner of the Bobby Joe Lankford tract and more particularly shown on a survey entitled, "J. Spot Taylor Heirs Survey, Danbury Township, Stokes County, N.C.", by Grinski Surveying Company, dated June 1985, and filed in the State Property Office.
- (8) All lands and waters located within the boundaries of South Mountains State Park as of April 6, 1999, with the exception of the following tracts: The portion of that tract or property at South Mountains State Park in Burke County, Lower Creek Township, described in Deed Book 862, Page 1471, required for the right-of-way and easements for the relocation of SR 1904 within the park and lying generally between the Rutherford Electric Membership Corporation right-of-way and the southern property boundary of the park, as described in the drawing entitled "Survey for State of North Carolina", dated January 28, 1999, prepared by Suttles Surveying, P.A., bearing the preparer's file name 12455.dwg and filed in the State Property Office; and the portions of land at South Mountains State Park that lie south of the centerline of the CCC road as shown on the drawing entitled "Land Trade between South Mountains State Park and Adjacent Game Lands along CCC Road" prepared by the Division of Parks and Recreation, dated March 15, 1999, and filed in the State Property Office and that lie within: (i) the tract or property in Burke County, Lower Fork Township, described in Deed Book 495, Page 501; (ii) the tract or

- property in Burke County, Lower Fork and Upper Fork Townships, described in Deed Book 715, Page 719; or (iii) within the tracts or property in Burke County, Upper Fork Township, described in Deed Book 860, Page 341, and Deed Book 884, Page 1640.
- (9) All lands and waters located within the boundaries of the following State Historic Sites as of January 1, 1999: Charles B. Aycock Birthplace, Bennett Place, Bentonville Battleground (formerly Bentonville Battleground Historic Site), Brunswick Town (formerly Brunswick Town Historic Site)/Fort Anderson, C.S.S. Neuse and Governor Caswell Memorial (formerly Governor Richard Caswell Memorial/C.S.S. Neuse Historic Site), Charlotte Hawkins Brown Memorial, Historic Edenton (formerly James Iredell House Historic Site), Fort Dobbs, Fort Fisher, Historic Halifax, Horne Creek Living Historical Farm, North Carolina Transportation Museum, Reed Gold Mine, Somerset Place, Tryon Palace Historic Sites & Gardens (formerly Tryon Palace Historic Site), and Thomas Wolfe Memorial (formerly Thomas Wolfe Memorial Historic Site).
 - (10) All lands and waters within the boundaries of Gorges State Park as shown on the map entitled "Boundaries of Gorges State Park" prepared by the Division of Parks and Recreation, dated May 27, 1999, and filed in the State Property Office, which lands and waters are a portion of the lands and waters acquired by the State of North Carolina on April 29, 1999, the purchase of which was approved by the Council of State at its meeting on March 2, 1999.

Section 2. The General Assembly dedicates and accepts all the following lands and waters, which were dedicated and accepted previously by the General Assembly to the State Nature and Historic Preserve, which properties have not changed their boundaries, but which have been renamed since their prior dedication and acceptance, as components of the State Nature and Historic Preserve as renamed: Mount Jefferson State Natural Area (formerly Mount Jefferson State Park), Alamance Battleground (formerly Alamance Battleground Historic Site), Historic Bath (formerly Historic Bath Historic Site), Duke Homestead (formerly Duke Homestead Historic Site), House in the Horseshoe (formerly House in the Horseshoe Historic Site), James K. Polk Memorial (formerly President James K. Polk Memorial Historic Site), Historic Stagville (formerly Stagville Preservation Center Historic Site), State Capitol (formerly State Capitol Historic Site), Town Creek Indian Mound (formerly Town Creek Indian Mound Historic Site), and Zebulon B. Vance Birthplace (formerly Governor Zebulon B. Vance Birthplace Historic Site).

Section 3. In accordance with G.S. 143-260.8(e), the Secretary of State is directed to forward a certified copy of this

resolution to the register of deeds of the counties in which the dedicated properties named in Sections 1 and 2 of this act are located.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of June, 1999.

S.J.R. 1169

RESOLUTION 19

A JOINT RESOLUTION HONORING THE MEMORY OF DR. DENISON OLMSTED, THE FIRST NORTH CAROLINA STATE GEOLOGIST ON THE ONE HUNDRED SEVENTY-FIFTH ANNIVERSARY OF THE NORTH CAROLINA GEOLOGICAL SURVEY.

Whereas, the North Carolina Geological Survey is the nation's oldest geological survey, having been established by the General Assembly on December 31, 1823; and

Whereas, Dr. Denison Olmsted, as the first state geologist, produced the first geologic map of a state in the nation in 1825, thereby producing the first state geological survey; and

Whereas, the North Carolina Geological Survey serves the citizens of North Carolina by examining the geology and mineral resources of the State; and

Whereas, the North Carolina Geological Survey administers cooperative geologic and topographic mapping programs; and

Whereas, the North Carolina Geological Survey's mission is to provide unbiased and technically accurate applied earth science scientific information to address societal needs through geologic maps, mineral resources and geochemical information, topographic maps, digital products, and earth science education materials; and

Whereas, a strong state geological survey will be essential for continued prosperity of the State and its citizens into the twenty-first century; and

Whereas, geology and the other earth sciences are fundamental to the safety, health, and welfare of North Carolinians and to the State's economy; and

Whereas, knowledge of the State's geology and geologic processes is essential for the proper understanding, protection, and management of the environment, and for mitigation of natural hazards; and

Whereas, the earth sciences are integral to finding, developing, and conserving the mineral, energy, and water resources needed for the continuing prosperity of North Carolina; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the memory of Dr. Denison Olmsted, and calls upon all North Carolinians to observe, celebrate, and participate in events commemorating the 175th

anniversary of the first geological survey of a state authorized by a state legislature.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of July, 1999.

S.J.R. 1171

RESOLUTION 20

A JOINT RESOLUTION RECOGNIZING WASHINGTON COUNTY UPON ITS BICENTENNIAL AND HONORING GEORGE WASHINGTON, FOR WHOM THE COUNTY IS NAMED.

Whereas, Washington County was formed in 1799 from Tyrrell County, and named for George Washington, the first President of the United States; and

Whereas, the first county seat was the Town of Roper earlier known as Lee's Mill where the first wood-framed courthouse was built; and

Whereas, in 1823 the General Assembly passed an act moving the county seat from Lee's Mill to Plymouth; and

Whereas, Washington County is an area rich in history; and

Whereas, Washington County served in the 1700s and 1800s as a major port, and the area prospered with rich agricultural and shipping resources until the Civil War; and

Whereas, the local culture reflects the pride instilled in each and every citizen as to their history; and

Whereas, the local Port O'Plymouth Museum located in Plymouth on the historic Roanoke River displays artifacts and documentation as to the rich heritage of the County specifically regarding the Civil War era; and

Whereas, there are many projects underway to restore and enhance historical sites throughout the County including the Roanoke River Lighthouse Reconstruction; and

Whereas, Washington County has prided itself on being an agriculturally based county, but maintains a diversified workforce for local industry particularly in wood and paper products; and

Whereas, Washington County is a haven for people who enjoy hunting, fishing, camping, or hiking whether it be on the Albemarle Sound, Roanoke River, Scuppernong River, Lake Phelps, one of the many creeks, in one of the reserves rich in wildlife, or in Pettigrew State Park; and

Whereas, the County Commissioners have appointed a Bicentennial Committee that has been working diligently developing the County's history and recently published Washington County, North Carolina - "A Tapestry."; and

Whereas, the Bicentennial Committee is scheduling events celebrating the bicentennial during the months of September through November of 1999; Now, therefore,

Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The General Assembly honors the life and memory of George Washington and expresses appreciation for the contributions he made to this country. The General Assembly congratulates Washington County on its bicentennial and joins the County's citizens in celebrating the County's bicentennial.

Section 2. The Secretary of State shall transmit a certified copy of this resolution to the Chair of the Washington County Board of Commissioners and to the County Manager.

Section 3. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of July, 1999.

H.J.R. 1488

RESOLUTION 21

A JOINT RESOLUTION HONORING THE LIFE AND MEMORY OF HENDERSON DAVID MABE, JR., A FORMER MEMBER OF THE HOUSE OF REPRESENTATIVES AND A FAMILY PHYSICIAN.

Whereas, Henderson David Mabe, Jr. was born on October 20, 1924, in Kinston, North Carolina, to Henderson D. Mabe, Sr. and Pauline Joyner Mabe; and

Whereas, Henderson David Mabe, Jr. graduated from the Bowman Gray School of Medicine of Wake Forest College in 1950 and thereafter did his residency at Watts Hospital and practiced medicine in the Town of Erwin; and

Whereas, Dr. Mabe, while active in community and business life, was a family doctor whose patients always came first; and

Whereas, Dr. Mabe was well known for seeing patients into the night and then making rounds at the local hospital; and

Whereas, Dr. Mabe loved North Carolina, the Town of Erwin, and the surrounding areas he served, and his patients; and

Whereas, Dr. Mabe served with honor and distinction as a member of the House of Representatives from 1963 to 1964; and

Whereas, as a member of the General Assembly, Dr. Mabe recognized the need for training more medical doctors and supported the first resolution calling for a study of the need for a new medical school, which later came to fruition as East Carolina University School of Medicine; and

Whereas, Dr. Mabe died on March 24, 1999; and

Whereas, Dr. Mabe left the bulk of his estate to the North Carolina Community Foundation to provide endowed scholarships to graduates from Harnett County high schools who wish to prepare for careers in the health care profession; and

Whereas, the General Assembly desires to recognize Dr. Henderson David Mabe, Jr.'s contributions to the State and its people; Now, therefore,

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. The General Assembly expresses its great appreciation for the life and accomplishments of Dr. Henderson David Mabe, Jr., and for his caring and devoted service to the sick, aged, and infirm throughout his 49 years as a family doctor.

Section 2. The General Assembly extends its sympathy to the family and friends of Dr. Henderson David Mabe, Jr.

Section 3. The Secretary of State shall transmit a certified copy of this resolution to the family of Dr. Henderson David Mabe, Jr.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

H.J.R. 1489

RESOLUTION 22

A JOINT RESOLUTION SETTING THE TIME FOR ADJOURNMENT OF THE 1999 GENERAL ASSEMBLY TO MEET IN 2000 AND LIMITING THE SUBJECTS THAT MAY BE CONSIDERED IN THAT SESSION.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. When they adjourn on Wednesday, July 21, 1999, the House of Representatives and the Senate shall adjourn to reconvene at noon on Monday, May 8, 2000. During that session only the following matters may be considered:

- (1) Bills directly and primarily affecting the State budget, including the budget of an occupational licensing board, for fiscal year 2000-2001, provided that the bill must be submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 p.m. Thursday, May 18, 2000, and must be introduced in the House of Representatives or filed for introduction in the Senate no later than 4:00 p.m. Thursday, May 25, 2000.
- (2) Bills and resolutions introduced in 1999 and having passed third reading in 1999 in the house in which introduced, received in the other house in accordance with Senate Rule 41 or House Rule 31.1(d) as appropriate, and not disposed of in the other house by tabling, unfavorable committee report, indefinite postponement, or failure to pass any reading, and which do not violate the rules of the receiving house.
- (3) Bills and resolutions implementing the recommendations of:
 - a. Study commissions and statutory commissions authorized or directed to report to the 2000 Session;
 - b. The General Statutes Commission, the Courts Commission, or any commission created under Chapter 120 of the General Statutes that is authorized or directed to report to the General Assembly;

- c. The House Ethics Committee; or
- d. The Joint Legislative Ethics Committee or its Advisory Subcommittee.

A bill authorized by this subdivision must be submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 p.m. Wednesday, May 10, 2000, and must be filed for introduction in the Senate or introduced in the House of Representatives no later than 4:00 p.m. Wednesday, May 17, 2000.

- (4) Any local bill that has been submitted to the Bill Drafting Division of the Legislative Services Office by 4:00 p.m. Wednesday, May 17, 2000, is introduced in the House of Representatives or filed for introduction in the Senate by 4:00 p.m. Wednesday, May 24, 2000, and is accompanied by a certificate signed by the principal sponsor stating that no public hearing will be required or asked for by a member on the bill, the bill is noncontroversial, and that the bill is approved for introduction by each member of the House of Representatives and Senate whose district includes the area to which the bill applies.
- (5) Selection, appointment, or confirmation of members of State boards and commissions as required by law, including the filling of vacancies of positions for which the appointees were elected by the General Assembly upon recommendation of the Speaker of the House of Representatives, President of the Senate, or President Pro Tempore of the Senate.
- (6) Any matter authorized by joint resolution passed during the 2000 Regular Session by a two-thirds majority of the members of the House of Representatives present and voting and by a two-thirds majority of the members of the Senate present and voting. A bill or resolution filed in either house under the provisions of this subdivision shall have a copy of the ratified enabling resolution attached to the jacket before filing for introduction in the Senate or introduction in the House of Representatives.
- (7) A joint resolution authorizing the introduction of a bill pursuant to subdivision (6) of this section.
- (8) Any bills primarily affecting any State or local pension or retirement system, provided that the bill has been submitted to the Bill Drafting Division of the Legislative Services Office no later than 4:00 p.m. Wednesday, May 17, 2000, and is introduced in the House of Representatives or filed for introduction in the Senate no later than 4:00 p.m. Wednesday, May 24, 2000.
- (9) Joint resolutions, House resolutions, and Senate resolutions pertaining to Section 5(10) of Article III of the Constitution of North Carolina or authorized for introduction under Senate Rule 40(b) or House Rule 31(g).

- (10) A joint resolution adjourning the 1999 Regular Session, sine die.
- (11) Bills to disapprove rules under G.S. 150B-21.3.
- (12) Constitutional amendments.

Section 2. A bill containing no substantive provisions may not be introduced in the House of Representatives during the 2000 Regular Session.

Section 3. The Speaker of the House of Representatives or the President Pro Tempore of the Senate may authorize appropriate committees or subcommittees of their respective houses to meet during the interim between sessions to:

- (1) Review matters related to the State budget for the 1999-2001 biennium,
- (2) Prepare reports, including revised budgets, or
- (3) Consider any other matters as the Speaker of the House of Representatives or the President Pro Tempore of the Senate deems appropriate,

except that no committee or subcommittee of a house may consider, after the date of adjournment provided in Section 1 of this resolution and before the date of reconvening provided in Section 1 of this resolution, any bill, or proposed committee substitute for such bill, which originated in the other house. A conference committee may meet in the interim upon approval by the Speaker of the House of Representatives or the President Pro Tempore of the Senate.

Section 4. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of July, 1999.

RESOLUTIONS

EXTRA SESSION 1999

H.J.R. 3

RESOLUTION 1

A JOINT RESOLUTION PROVIDING FOR ADJOURNMENT
SINE DIE OF THE 1999 EXTRA SESSION.

Be it resolved by the House of Representatives, the Senate concurring:

Section 1. When the Senate and the House of Representatives, constituting the 1999 Extra Session of the General Assembly, do adjourn on Thursday, December 16, 1999, they stand adjourned sine die.

Section 2. This resolution is effective upon ratification.

In the General Assembly read three times and ratified this the 16th day of December, 1999.

**JOINT CONFERENCE COMMITTEE REPORT
ON THE
CONTINUATION, EXPANSION
AND CAPITAL BUDGETS**

June 29, 1999

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Budget Reform Statement

	1999-2000 (\$ Millions)	2000-2001 (\$ Millions)
(01) Composition of the 1999-2000 beginning availability:		
a. Unappropriated balance by 1998 Session	0.2	
a. Revenue collections in 1998-99 in excess of authorized estimates	333.9	
b. Unexpended appropriations during 1998-99	106.3	
Subtotal	440.4	
c. Transfer to Reserve for Repairs and Renovations	(150.0)	
d. Transfer to Clean Water Management Trust Fund	(30.0)	
e. Transfer to Savings Reserve	--	
Ending Fund Balance	260.4	
(02) Beginning Unrestricted Fund Balance	260.4	0.0
Revenues Based on Existing Tax Structure	12,368.4	13,105.0
Revenues-Gains on Asset Sale (RJR)	69.0	--
Nontax Revenues	523.8	550.5
Disproportionate Share Receipts	105.0	105.0
Transfer from Highway Trust Fund	170.0	170.0
Transfer from Highway Fund	13.6	13.8
Subtotal	13,249.8	13,944.3
Transfer from Disproportionate Share Receipts Reserve	20.0	0.0
Transfer from Flexible Benefits Reserve	1.3	0.0
Total Availability	13,531.5	13,944.3

General Fund Appropriations

1999-2000, 1999 Session

Continuation	Legislative Actions				Net Change	Total
	Reductions		Increases			
	Recurring	Non-Recurring	Recurring	Non-Recurring		
Education						
Public Schools	5,143,579,517	(41,399,737)	65,517,084	141,440,000	119,048,159	5,262,627,676
Community Colleges	549,590,909	(23,327,015) A	57,913,979	2,869,000	30,212,942	579,803,851
University	1,589,402,360	(17,982,429) A	79,800,660	3,175,000	54,841,963	1,644,244,323
Total Education	7,282,572,786	(82,719,181)	203,231,743	147,483,000	204,103,064	7,486,675,850
General Government:						
General Assembly	35,695,575	0	(715,000)	0	(715,000)	34,980,575
Governor's Office	5,317,042	(53,678)	0	0	(53,678)	5,263,364
State Budget & Management	4,167,118	(41,000)	20,000	0	(21,000)	4,146,118
State Planning	2,147,099	0	0	0	0	2,147,099
Special Appropriations	3,080,000	0	0	0	0	3,080,000
The Lieutenant Governor	640,485	0	0	2,575,000	2,575,000	5,655,000
Administration	60,161,435	(486,656)	150,000	0	0	60,485
Office of State Controller	10,798,673	(216,105)	900,000	1,490,000	786,197	60,947,632
Administrative Hearings Office	2,687,664	0	64,485	0	683,995	11,482,568
Administrative Rules Review	317,343	0	0	5,050	69,535	2,757,199
Cultural Resources	57,117,617	(349,540)	0	0	0	317,343
Cultural Resources-Roanoke Island	1,826,157	0	520,000	12,600,000	12,770,460	69,888,077
Insurance	21,473,947	(191,740)	0	0	0	1,826,157
Insurance-RICO	4,500,000	0	306,056	420,500	534,816	22,008,763
Secretary of State	6,284,106	0	0	0	0	4,500,000
State Auditor	11,656,492	(125,682)	385,009	144,685	404,012	6,686,118
State Treasurer-Operations	7,220,452	(116,565)	68,114	6,590	(41,861)	11,614,631
State Treasurer-Retirement/Employee Benefits	12,294,780	(1,085,128)	368,920	306,600	(409,608)	6,810,844
Revenue	78,328,188	0	0	0	0	12,294,780
State Board of Elections	3,159,660	(375,000)	974,671	90,125	689,796	79,017,984
Total General Government	328,873,833	(3,041,084)	3,797,255	17,638,550	17,312,564	346,186,397
Human Resources						
Central Administration	89,320,298	(1,233,168)	900,000	4,099,000	3,765,832	93,086,130
Aging Division	29,742,117	0	50,000	250,000	300,000	30,042,117
Child Development	225,269,727	0	59,243,000	1,500,000	60,743,000	286,012,727
Health Services	130,661,203	(1,384,320)	1,059,300	3,025,000	2,699,980	133,361,183
Blind Services	17,232,679	(64,687)	275,000	0	210,313	17,462,992

1999-2000, 1999 Session

1990

General Fund Appropriations

1999-2000, 1999 Session

Continuation	Legislative Actions				Net Change	Total
	Recurring	Reductions	Non-Recurring	Recurring	Increases	
Contingency and Emergency	1,125,000	0	0	0	0	1,125,000
State Health Plan	0	0	0	110,000,000	0	110,000,000
Retirees Health Benefit Reserve	0	0	0	0	0	110,000,000
Welfare Reform	412,503	0	(144,000,000)	0	(144,000,000)	(144,000,000)
Mail Service Consolidation Savings	0	0	0	0	0	412,503
Salary Increases of SPA Employees	63,627,578	(1,000,000)	0	0	(1,000,000)	(1,000,000)
Salary Increases of Employees	0	0	0	0	0	63,627,578
Salary Bonus	0	0	0	397,600,000	0	397,600,000
Salary Adjustment Fund	3,944,303	0	0	0	16,400,000	16,400,000
SPA Minimum Salary	0	0	0	0	0	3,944,303
Judicial Retirement Rate Reduction	0	0	0	100,000	0	100,000
Savings-Positions Vacated by Retirement	0	(900,000)	0	0	0	(900,000)
Total Reserves and Transfers	69,109,384	(12,709,439)	0	0	(12,709,439)	(12,709,439)
		(14,609,439)	(144,000,000)	507,700,000	365,490,561	434,599,945
Total General Fund for Operations	12,596,885,350	(275,124,780)	(335,385,377)	832,675,684	236,363,584	13,055,394,461
Capital Improvements-Direct Appropriation	0	0	0	0	77,059,168	77,059,168
Total General Fund Operating/Capital	12,596,885,350	(275,124,780)	(335,385,377)	832,675,684	313,422,752	13,132,453,629
Appropriations by Earmarking of Availability: Bailey/Palton/Emory Lawsuit	0	0	0	0	399,000,000	399,000,000
Total General Fund Direct Appropriations	12,596,885,350	(275,124,780)	(335,385,377)	832,675,684	712,422,752	13,531,453,629
Appropriations by Earmarking Ending Credit Balance, June 30, 1999 (See 01 of Budget Reform Statement)	0	0	0	0	150,000,000	150,000,000
Capital Improvements-Repairs/Renovations Clean Water Management Trust Fund	0	0	0	0	30,000,000	30,000,000
Total Credit Balance Earmarking	0	0	0	0	180,000,000	180,000,000

A: Includes tuition increase as reduction

General Fund Appropriations

2000-2001, 1999 Session

	Continuation	Legislative Actions				Net Change	Total
		Reductions		Increases			
		Recurring	Non-Recurring	Recurring	Non-Recurring		
Education:							
Public Schools	5,195,842,820	(25,417,981)	0	92,755,952	14,337,457	81,675,428	5,277,518,248
Community Colleges	549,428,729	(23,327,015) A	0	64,913,979	0	41,586,964	591,015,693
University	1,595,487,506	(18,787,301) A	0	80,163,022	0	61,375,721	1,656,863,227
Total Education	7,340,759,055	(67,532,297)	0	237,832,953	14,337,457	184,638,113	7,525,397,168
General Government:							
General Assembly	39,518,408	0	0	0	0	0	39,518,408
Governor's Office	5,335,850	(53,678)	0	0	0	(53,678)	5,282,172
State Budget & Management	4,268,782	(41,000)	0	20,000	0	(21,000)	4,247,782
State Planning	2,147,099	0	0	0	0	0	2,147,099
Special Appropriations	3,080,000	0	0	0	0	0	3,080,000
The Lieutenant Governor	640,485	0	0	0	0	0	640,485
Administration	60,425,982	(486,656)	0	150,000	0	(336,656)	60,089,326
Office of State Controller	10,804,420	(216,105)	0	900,000	0	683,895	11,488,315
Administrative Hearings Office	2,721,970	0	0	64,485	0	64,485	2,786,455
Administrative Rules Review	309,328	0	0	0	0	0	309,328
Cultural Resources	58,012,004	(349,540)	0	520,000	0	170,460	58,182,464
Cultural Resources-Roanoke Island	1,826,157	0	0	0	0	0	1,826,157
Insurance	21,484,721	(191,740)	0	306,058	0	114,316	21,599,037
Insurance-RICO	4,500,000	0	0	0	0	0	4,500,000
Secretary of State	6,196,606	(125,682)	0	385,009	0	259,327	6,455,933
State Auditor	11,656,492	(116,565)	0	68,114	0	(48,451)	11,608,041
State Treasurer-Operations	7,220,452	(1,085,128)	0	432,929	0	(652,199)	6,568,253
State Treasurer-Retirement/Employee Benefits	12,294,780	0	0	0	0	0	12,294,780
Revenue	74,905,962	(375,000)	0	974,671	0	599,671	75,505,633
State Board of Elections	3,159,660	0	0	40,000	0	40,000	3,199,660
Total General Government	330,509,156	(3,041,094)	0	3,861,284	0	820,170	331,329,326
Human Resources							
Central Administration	90,139,971	(1,233,168)	0	900,000	0	(333,168)	89,806,803
Aging Division	29,742,117	0	0	50,000	0	50,000	29,792,117
Child Development	225,269,727	0	0	80,171,826	0	80,171,826	305,441,553
Health Services	132,304,079	(1,384,320)	0	1,059,300	0	(325,020)	131,979,059
Blind Services	17,244,842	(64,687)	0	275,000	0	210,313	17,455,155

General Fund Appropriations

2000-2001, 1999 Session

Continuation	Legislative Actions					Net Change	Total
	Reductions		Increases				
	Recurring	Non-Recurring	Recurring	Non-Recurring			
Vocational Rehabilitation	36,857,870	0	1,398,533	0	1,398,533	38,256,403	
Mental Health	604,433,264	(7,938,722)	0	11,163,479	3,224,757	607,558,021	
NC Health Choice	25,509,475	0	0	0	0	25,509,475	
Schools for the Deaf and Hard of Hearing	31,721,677	(169,728)	0	0	267,872	31,989,549	
Facility Services	10,244,297	0	437,600	0	954,559	11,198,856	
Social Services	181,043,651	(14,476)	0	4,430,200	4,415,724	185,459,375	
Medical Assistance	1,653,624,285	(126,146,158)	0	12,071,143	(114,075,015)	1,539,549,270	
Total Human Resources	3,038,135,255	(138,951,259)	0	112,911,640	(24,039,619)	3,014,095,636	
Justice and Public Safety:							
Correction	921,431,794	(32,351,540)	0	863,271	(31,488,269)	889,943,525	
Crime Control & Public Safety	35,899,900	(552,276)	0	920,220	367,944	36,267,844	
Judicial Department	340,135,574	(6,179,507)	0	13,405,224	7,225,717	347,361,291	
Juvenile Justice	130,954,378	(1,100,000)	0	9,779,000	385,000	140,018,378	
Justice	71,521,703	(1,524,871)	0	2,455,000	123,918	72,575,950	
Total Justice and Public Safety	1,499,943,349	(41,707,994)	0	27,422,715	(13,776,361)	1,486,166,988	
Natural And Economic Resources							
Agriculture and Consumer Services	53,590,208	(492,588)	0	1,048,981	556,393	54,146,601	
Commerce/Economic & Community Development	40,082,482	(712,847)	0	4,375,730	3,662,883	43,745,365	
Commerce-State Aid	13,546,251	(10,000)	0	3,560,000	3,550,000	17,096,251	
Commerce-SIPS	0	0	0	0	0	0	
Labor	16,457,031	(109,780)	0	22,000	(87,780)	16,369,251	
NC Housing Finance Agency	2,300,000	0	0	3,000,000	3,000,000	5,300,000	
Environment, Health and Natural Resources	153,992,565	(2,931,000)	0	6,273,208	3,342,208	157,700,273	
Total Natural and Economic Resources	279,968,537	(4,256,215)	0	18,279,919	365,500	294,357,741	
Transportation	15,434,165	0	0	0	14,389,204	15,434,165	
Debt Service							
Interest/Redemption	311,096,050	(20,386,500)	0	0	(20,386,500)	290,709,550	
Federal Reimbursement	1,155,948	0	0	0	0	1,155,948	
Total Debt	312,251,998	(20,386,500)	0	0	(20,386,500)	291,865,498	
Reserves and Transfers							

General Fund Appropriations

2000-2001, 1999 Session

	Continuation	Legislative Actions				Net Change	Total
		Reductions		Increases			
		Recurring	Non-Recurring	Recurring	Non-Recurring		
Contingency and Emergency	1,125,000	0	0	0	0	0	1,125,000
State Health Plan	0	0	0	147,000,000	0	147,000,000	147,000,000
Welfare Reform	412,503	0	0	0	0	0	412,503
Mail Service Consolidation Savings	0	(1,500,000)	0	0	0	(1,500,000)	(1,500,000)
Salary Increases of SPA Employees	63,627,578	0	0	0	0	0	63,627,578
Salary Increases of Employees	0	0	0	397,600,000	0	397,600,000	397,600,000
Salary Adjustment Fund	4,444,303	0	0	0	0	0	4,444,303
SPA Minimum Salary	0	0	0	100,000	0	100,000	100,000
Judicial Retirement Rate Adjustment	0	(900,000)	0	0	0	(900,000)	(900,000)
Savings-Positions Vacated by Retirement	0	(12,709,439)	0	0	0	(12,709,439)	(12,709,439)
Total Reserves and Transfers	89,809,384	(15,109,439)	0	544,700,000	0	529,590,561	599,199,945
Total General Fund for Operations	12,886,610,899	(288,984,798)	0	945,008,491	15,211,875	371,235,568	13,557,846,467

A. Includes tuition increase as reduction

Section F: Education



Public Education

GENERAL FUND

	FY 99-2000	FY 2000-01
Recommended Budget	\$5,143,579,517	\$5,195,842,820

Legislative Changes

ABC Program

1 ABC Bonus Awards 1999-2000

Provide funds to pay the projected ABC bonus awards for FY1999-2000. \$140,000,000 NR \$0 NR

Excellent Schools Act

2 Increase Teacher Salaries

Implement the third year of the new teacher salary schedule called for in the Excellent Schools Act. \$239,870,258 in recurring funds are located in the Compensation Reserves for this purpose.

3 Teacher Longevity: 1999-2000 Salary Increases

\$8,199,548 R \$5,000,000 R

Appropriate funds to teacher longevity increases associated with the FY1999-2000 salary increases that are a part of the Excellent Schools Act

4 Mentor Teachers

\$14,235,124 R \$14,235,124 R

Provide funds for mentor teachers.

Improving Student Success

5 Improving Student Accountability

\$20,582,412 R \$20,582,412 R

Appropriates funds to local school systems to improve student performance in grades K-8. Funds are allocated to local school systems based on the numbers of students scoring at Level I and II on the end-of-grade test.

6 Limited English Proficiency

\$5,000,000 R \$5,000,000 R

Provide additional funds for students who are limited proficiency in English.

7 Low Wealth Supplemental Funding

\$10,000,000 R \$10,000,000 R

Provide additional Low Wealth Supplemental Funding.

Conference Report on the Continuation, Capital, and Expansion Budget		FY 99-2000		FY 2000-01	
8 Small School System Supplemental Funding		\$3,000,000	R	\$3,000,000	R
Provide additional Small School System Supplemental funding.					
9 ExplorNet Funding		\$2,000,000	R	\$2,000,000	R
Provide additional funding for ExplorNet to assist in programs for public schools.					
10 Student Information System		\$0	R	\$10,000,000	R
Funds to continue implementation of a new student information system in the public schools. The new system supports the State Board of Education's goals under the ABC Program and previous information requirements of the General Assembly.					
11 Teacher Cadet Program		\$100,000	R	\$100,000	R
Provide funds for the North Carolina Teacher Cadet Program.					
12 Programs to Assist Local School Systems		\$600,000	R	\$600,000	R
Provide funds to the State Board of Education to assist local school systems in programs to improve student performance. Included are the TOE Program, Global Curriculum Program, and the North Carolina Geographic Alliance.					
13 A+ Schools		\$400,000	R	\$400,000	R
Provides funds to continue the A+ Schools Program.					
14 Textbook Commission Expansion		\$50,000	R	\$50,000	R
Funds to support additional members for the State Textbook Commission.					
15 School Leadership Pilot		\$240,000	NR		
Funds to the State Board of Education for the school leadership pilot project. The two school districts receiving the funds will participate in the nationwide program of the Center for Leadership in School Reform.					
16 School Breakfast Program		\$1,100,000	R	\$1,100,000	R
Begin implementing a school breakfast program for all kindergarten students. The program would begin in January of 2000.					

17 Funds for School Needs

Appropriates funds to the Critical School Facility Needs Fund to assist local school administrative units in which one or more schools were damaged or destroyed	\$200,000	NR		
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18 North Carolina Network Funds

Appropriates funds to the State Board of Education for the North Carolina Network to provide training for school based management teams, and to improve the management capacity of local school administrative units.	\$250,000	R	\$250,000	R
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19 Technology Funds Pilot

Appropriates funds to the State Board of Education for Highland School of Technology Pilot Project. These funds will be used to help support an innovative public-private partnership in school technology through the Gaston County Educational Foundation Inc.	\$1,000,000	NR		
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Various Budget Adjustments

20 Average Annual Salary Adjustment

Annual adjustment in average salary of certified personnel to reflect actual experience through December 1998.	(\$14,227,946)	R	(\$14,417,981)	R
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21 Additional Adjustments in Average Salary Projections

Reanalysis of the 1998 certified payroll data by the Department of Public Instruction found that the availability of more current teacher certification data produced an additional change in the projected average salary for 1999-2001 fiscal biennium.	(\$10,352,000)	R	(\$10,500,000)	R
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22 Revise Average Daily Membership

Revise amounts budgeted for average membership increases to reflect current projections of average daily membership growth for FY1999-2001.	(\$16,319,791)	R	\$1,905,473	R
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23 Reduce Children's Trust Fund Balances

Reduce balance in the Children's Trust fund.	(\$1,300,000)	NR		
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24 Reduce Literary Fund Balance

Reduce the balance in the Literary Fund and reappropriate these funds to the public schools.	(\$2,500,000)	NR		
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25 Unemployment Fund

Reduce balance in the Unemployment Fund for federally funded positions.	(\$850,000)	NR		
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Public Education

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26 Prospective Teacher Scholarship Loan Program				
Reduce balance in the Prospective Teacher Scholarship Loan Program Fund. The reduction will have no impact on the number of scholarships available in FY1999-2001 fiscal biennium.	(\$500,000)	NR		
27 Textbook Fund				
Reduce unneeded balance in the textbook fund. The reduction in the balances in this fund will have no impact on the availability of textbooks to school students.	(\$500,000)	NR		
28 Teaching Fellows Program				
Reduce the balance in the Teaching Fellows Scholarship Loan Fund. The reduction will have no impact on the number of scholarships available in the 1999-2001 fiscal biennium.	(\$8,500,000)	NR		
29 School Bus Purchases			\$18,532,943	R
Governor's recommended deferral of the purchase of 377 school buses in FY1999-2000.	(\$18,021,731)	NR		
30 School Bus Purchases				
Additional deferral of the purchase of school buses in FY1999-2000. With this deferral the State would still purchase \$26.1 million in buses during the next fiscal year. In FY2000-2001 the funding is restored.	(\$14,337,457)	NR	\$14,337,457	NR
31 State Funds for Unemployment			(\$500,000)	R
Reduce the State funds appropriated for unemployment.				
<hr/>				
Total Legislative Changes			\$24,117,347	R
			\$94,930,812	NR
Total Position Changes				
Revised Budget			\$5,262,627,676	\$5,277,518,248
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UNC System

GENERAL FUND

	FY 99-2000		FY 2000-01
Recommended Budget	\$1,589,402,360		\$1,595,487,506
Legislative Changes			
A. Various Campuses			
32 Governor's Across-the-Board Reduction	(\$7,233,554)	R	(\$7,233,554) R
Reduces General Fund support by 0.5% (except for financial aid programs) on a pro rata basis.			
33 Reserves for New Facilities			\$362,342 R
Reduction in reserves for new buildings are adjusted to account for delays in occupancy.	(\$1,841,288)	NR	
34 Equipment			
Adjust increases in equipment budgets	(\$1,000,000)	NR	
B. UNC Hospitals			
35 UNC Hospitals Support	(\$2,544,383)	R	(\$2,544,383) R
Eliminate first year's proposed increase in support			
C. East Carolina University			
36 Medicare Receipts			
Increase budgeted receipts from Medicare Medical Education reimbursement for one year; transfer \$2 million from trust fund balance for operations for one year.	(\$3,000,000)	NR	
Receipts \$3,000,000			
General Fund (\$3,000,000)			
D. Related Educational Programs			
37 Scholarship Fund Balances			
Reduce appropriations for one year to spend down accumulated balances in scholarship trust funds for Nurse Scholars, Principal Fellows, Nurse Education Scholarship Loans, Social Work Education Loan Fund	(\$3,000,000)	NR	
38 Aid to Private Medical Schools	(\$455,000)	R	(\$455,000) R
Eliminate proposed increase to budget for actual experience over past three years			

UNC System

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39 Aid to Students Attending Private Colleges	\$8,022,850	R	\$8,022,850
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Increases Legislative Tuition Grant for all fulltime students from \$1,600 to \$1,750. Increases need-based scholarship funding from \$900 to \$1,050 per fulltime equivalent student (FTE). Total increase is \$300 per student.

40 Aid to Private Colleges: Students with Learning Disabilities	\$50,000	NR	
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Assistance to Louisburg College for development of a program to provide postsecondary educational opportunities and learning skills to students with learning difficulties.

E. Schedule of Priorities

41 Enrollment Increases: Regular Term	\$19,493,004	R	\$19,493,004
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Fund projected on-campus enrollment for 1999-2000, an increase of approximately 1,494 Full-time equivalent (FTE) students over the 98-99 budgeted FTE.

42 Enrollment Increases: Distance Education	\$3,895,187	R	\$3,895,187
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Funds 70% of Board's request for expansion of off-campus degree programs for 1999-2000

43 UNC Focused Enrollment Growth	\$10,000,000	R	\$10,000,000
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Funds targeted at implementing the Board's plan for enrollment growth, focusing resources on campuses with underutilized capacity. Funds will be used for assessment of needs, better operating efficiencies through economies of scale, physical facilities management, faculty improvement, and development capacity.

44 New Degree Programs	\$1,340,000	R	\$1,340,000
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Funds to support newly authorized degree programs at six campuses (East Carolina, Elizabeth City State, NC A & T State, NC State, UNC-Charlotte, Winston-Salem State)

45 Transition of East Carolina to Doctoral II Status	\$1,500,000	R	\$1,500,000
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Funding for second phase of change in classification of East Carolina University to a Doctoral II university.

46 Financial Aid	\$1,300,000	R	\$1,300,000
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Additional need-based financial assistance for in-state students

47 Improve College Going Rate	\$1,000,000	R	\$1,000,000
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Funding for PATHWAYS initiative to increase the number of North Carolina students attending college

Conference Report on the Continuation, Capital, and Expansion Budget	FY 99-2000		FY 2000-01	
48 Information Technology	\$10,000,000	R	\$10,000,000	R
Funding for software, hardware, and operating support				
49 Strategic Initiatives Reserve	\$3,000,000	R	\$3,000,000	R
Funds for rapid targeting of urgent issues and problems on campuses, enabling the University to explore new initiatives.				
50 Rewarding Excellence in Teaching	\$7,077,639	R	\$7,077,639	R
Funds for awarding additional salary increases to a portion of teaching faculty judged as excellent teachers.				
51 Graduate Student Tuition Remission	\$3,500,000	R	\$3,500,000	R
Provide funds for graduate tuition remission and resident graduate tuition awards on campuses not classified as Research I universities.				
52 Service to Public Schools: A. Reserve	\$1,000,000	R	\$1,000,000	R
Expansion funds for UNC Center for School Leadership for K-16 Matching Incentive Grants, Model Teacher Consortium, and High Performance Lighthouse Schools.				
53 Service to Public Schools: B. International Educator Exchange for K-12	\$112,000	R	\$112,000	R
Funding to provide program of international exchange for educators				
54 Service to Public Schools: C. Reading Together	\$300,000	R	\$300,000	R
Additional funding for elementary tutorial program in reading at UNC-Greensboro.				
55 Public Service: Aging	\$100,000	R	\$100,000	R
Expansion budget support for the Institute on Aging to expand outreach services to local service providers				
56 Public Service: Hispanic Initiative	\$100,000	R	\$100,000	R
Funds to assist service providers adjust to changing demographics and demands caused by Hispanic immigration				
57 Public Service: Agricultural Matching Funds	\$750,000	R	\$750,000	R
Funding for NC Agricultural and Technical State University to match federal funding for research and extension programs				

Conference Report on the Continuation, Capital, and Expansion Budget		FY 99-2000		FY 2000-01
58 Public Service: Manufacturing Extension Partnership		\$900,000	R	\$900,000 R
Provide matching funds for engineering assistance to small manufacturers through NC State Industrial Extension Service				
59 Public Service: Agricultural Research-Turf Grass				
Funds to continue research on turf grass by NC State University.		\$150,000	NR	
60 Public Service: NC Arboretum		\$250,000	R,	\$250,000 R
Expanded operating funds for the Arboretum to provide services to an increasing number of visitors and to maintain recently developed areas.				
61 Public Service: International Outreach-Cooperative Programs				
Matching funds for cooperative programs in science and technology between NC and Israel.		\$250,000	NR	
62 Public Service: Biomedical/Biotechnology Research Institute		\$350,000	R	\$350,000 R
Provides funds for equipment and program operations, including research staff, for research and training in cardiovascular diseases, drug abuse, and environmental toxicology.		\$1,150,000	NR	
63 Tuition Increase		(\$7,759,492)	R	(\$8,554,364) R
The Board of Governors has approved a tuition increase of 4.9% for NC undergraduates, with similar dollar increases for non-residents. Graduate tuition will increase from 6.9% to 8.4% for in-state graduates.				
64 Reallocation of Funds for Priorities				
For the first year, the 16 campuses must reallocate \$1,300,000 of previously required reversions to initiatives funded in the expansion priorities		(\$1,300,000)	NR	
F. Other				
65 Institute of Medicine		\$200,000	R	\$200,000 R
Operating support for this research organization located at UNC-Chapel Hill.				
F. Other Items				
66 Public Service: Outreach to the Public Schools		\$1,000,000	R	\$1,000,000 R
Learn NC: Funds to continue technology initiative at UNC-Chapel Hill				

Conference Report on the Continuation, Capital, and Expansion Budget	FY 99-2000		FY 2000-01	
67 Center for Alcohol Studies Provides additional funding for Center's endowment.	\$500,000	R	\$500,000	R
68 Reserve for K-12 Initiative Funding for "World View" program and "K-12 International Outreach" program at UNC-Chapel Hill	\$260,000	R	\$260,000	R
69 Teacher Academy Additional funds for staff development activities of the Academy	\$250,000	R	\$250,000	R
70 PT-CAM One-time operating support for the Piedmont Triad Center for Applied Manufacturing operated by NC A & T State as it approaches self-sufficiency from receipts.	\$250,000	NR		
71 Leadership NC Funding to non-profit leadership training program	\$75,000	NR		
72 Carbon Dioxide Dyeing Project Funds to support purchase of prototype commercial textile dyeing equipment to test new process developed at NC State.	\$500,000	NR		
73 Allow Research Campuses to Retain Overhead Receipts Funds to replace 5% of overhead receipts currently transferred by Research I campuses to UNC General Administration for operations.	\$3,500,000	R	\$3,500,000	R
74 Diabetes Funding Provide additional funding for the diabetes programs of the UNC-CH (\$200,000) and East Carolina (\$100,000) Schools of Medicine.	\$300,000	NR		
75 Endowed Chair Funding for state match to create an endowed chair at UNC-CH School of Medicine for the study of anorexia and bulimia.	\$400,000	NR		
76 Program on Southern Politics, Media, and Public Life Funding to support program at UNC-CH.	\$50,000	NR		
77 Agricultural Programs: Christmas Tree Research Funds to support research in Christmas tree genetics at N. C. State University	\$100,000	R	\$100,000	R

UNC System

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Total Legislative Changes	\$61,808,251	R	\$61,375,721	R
	(\$6,966,288)	NR		
Total Position Changes	203.20		203.20	
Revised Budget	\$1,644,244,323		\$1,656,863,227	

Community Colleges

GENERAL FUND

	FY 99-2000		FY 2000-01	
Recommended Budget	\$549,590,909		\$549,428,729	
Legislative Changes				
78 Enrollment Changes	\$18,769,897	R	\$18,769,897	R
Provides funds to cover the increased community college enrollment. FTE students are allocated on the previous year's actual enrollments.				
79 Need-Based Financial Aid	\$5,000,000	R	\$5,000,000	R
This creates the largest community college need-based financial aid program in North Carolina's history. A significant portion of the additional curriculum tuition receipts will be set aside for need-based financial aid for community college students. This anticipates offsetting any tuition increase for those students who are not eligible for the Federal Hope and Lifetime Learning tax credits. These funds shall not revert.				
80 Management Information System Reserve	\$8,000,000	R	\$15,000,000	R
North Carolina's Community College System does not have a Management Information System. This will allow the State Board of Community Colleges to begin the development of a comprehensive MIS. These funds shall be put in a non-reverting reserve.				
81 Multi-Campus Funds	\$1,000,000	R	\$1,000,000	R
To provide additional funding for the operation of multi-campus colleges. The funds will be equally distributed to those sites.				
82 Information Tech.Training/AHS Certificate Funds for Central Piedmont CC				
Non-recurring funds for Central Piedmont Community College to use for either its Regional Information Technology Training program or pilot Adult High School/Certification Initiative.	\$200,000	NR		
83 Hosiery Technology Center Funds				
Additional one-time appropriation to support the Hosiery Technology Center operations.	\$350,000	NR		

Community Colleges

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84 Fayetteville Tech Botanical Lab Funds				
A nonrecurring grant-in-aid to Fayetteville Tech to develop a regional botanical laboratory in partnership with the Cape Fear Botanical Garden.		\$450,000	NR	
85 Regional Emergency Services Training Facility				
Provides a grant-in-aid for Central Carolina Community College to create a regional emergency services training facility.		\$750,000	NR	
86 Start-Up and Transit. Funds for New Comm. Coll. Serving Anson/Union/Stany				
Provides start-up funds for the creation of a new multi-county community college serving Anson and Union counties (\$300,000). Also gives funds to Stanly Community College for its' loss in FTEs (\$300,000). These funds may be carried forward and may be spent over the 1999-2001 biennium.		\$600,000	NR	
87 Scotland County Satellite Funds				
Grant-in-aid to Richmond Community College for its Scotland county satellite.		\$318,000	NR	
88 A-B Tech Small Business Center Funds				
Additional non-recurring funds for Asheville-Buncombe Technical Community College to use in its Small Business Center.		\$200,000	NR	
Enhancement of Faculty Salaries				
89 Additional Faculty Salary Increase Funds				
Gives the community college system an additional 2% for faculty salary increases. This is in addition to the 3% across-the-board increase provided to all employees.		\$7,144,082	R	\$7,144,082 R
90 Instructional and Administrative Support				
By providing additional support positions, funds that community colleges have been transferring from the formula salary line can be significantly reduced. The State Board of Community Colleges shall ensure that at least one additional financial aid counselor is distributed to each college to actively promote financial assistance opportunities for students and to help maximize the benefits and understanding of the Federal tax credits in order for North Carolinians to fully utilize the Federal money that is available.		\$8,000,000	R	\$8,000,000 R

91 Increase "Other Cost" Funds

\$10,000,000 R \$10,000,000 R

By increasing the amount allocated under the funding formula for non-salary "other cost" items, colleges will free up existing salary line formula money to either enhance faculty salaries or reduce the dependence on part-time faculty. This is the first increase in "other cost" items since 1985 and more accurately reflects the colleges' actual expenditures.

Reductions

92 Community Services Block Grant

(\$1,821,797) NR

Ask Community Colleges to spend down institutional fund balances and offer hobby and leisure courses on a self-supporting basis for one year. This block grant would be eliminated for one year only. This does not affect the policy regarding senior citizens free tuition.

93 Shift Focused Industrial Training Prog. To WTTF

(\$300,000) NR

Currently the Worker Training Trust Fund provides approximately half of the money for the Community Colleges Focused Industrial Training Program. This would shift an additional \$300,000 of the program funding from the General Fund to the Worker Training Trust Fund for one year only.

94 Refund of Kodak NEIT Funds

(\$1,020,225) NR

A non-recurring reduction can be made to offset the refund the New and Expanding Industry Training Program received from Kodak.

95 Human Resources Development Program

(\$100,000) R (\$100,000) R

Reduce the HRD program by \$100,000. This program has been underspending its appropriation.

96 Special Allotment for Nursing Programs

(\$410,000) R (\$410,000) R

Eliminates the extra money that is allocated over and above the funding formula for nursing programs.

97 Unemployment Compensation

(\$100,000) NR

Reduce the amount for unemployment compensation based on more recent estimates.

98 Eliminate Interest-Only Scholarship Reserve

(\$4,000,000) NR

With the current low interest rates this reserve is not generating sufficient financial aid resources. The direct, recurring appropriation in this budget is a more effective method of providing community college need-based financial aid.

Community Colleges

Conference Report on the Continuation, Capital, and Expansion Budget	FY 99-2000		FY 2000-01	
99 Vacant Position Reductions	(\$67,015)	R	(\$67,015)	R
The Governor proposes eliminating two vacant positions in the Community Colleges System Office				
Tuition				
100 Continuing Education Fee	(\$4,750,000)	R	(\$4,750,000)	R
The State Board shall create a sliding fee for continuing education classes that will reflect both the length of the class and the ability to absorb a fee increase. The fees shall be sufficient to generate the budgeted receipts for continuing education.				
101 Curriculum Tuition	(\$18,000,000)	R	(\$18,000,000)	R
Increase curriculum tuition rates by \$95 per semester and a pro rata amount for summer term which will allow financially needy North Carolinians to access and maximize benefits of the Federal Pell Grants, Hope and Lifetime Learning Tax Credits. Those students not qualifying for these Federal benefits are anticipated to benefit from need-based financial aid funded in this budget. A significant portion of these receipts to the community college system can be received from these Federal programs.				
Total Legislative Changes	\$34,586,964	R	\$41,586,964	R
	(\$4,374,022)	NR		
Total Position Changes				
Revised Budget	\$579,803,851		\$591,015,693	

Section G: Human Resources

Health and Human Services

GENERAL FUND

		FY 99-2000		FY 2000-01	
Recommended Budget		\$2,871,957,449		\$3,038,135,255	
Legislative Changes					
(1.00) Office of the Secretary					
1	Eliminate Rural Health Reserve	(\$380,370)	R	(\$380,370)	R
Eliminates reserve in the Rural Health Section which is no longer needed due to increased federal receipts.					
2	Eliminate Vacant Positions	(\$52,798)	R	(\$52,798)	R
Eliminates 2.05 positions: Film Library Supervisor, Information Processing Assistant II, and Computing Consultant I.					
		-2.05		-2.05	
3	Reduce Mental Health Medicaid Match Reserve	(\$600,000)	R	(\$600,000)	R
Reduces state appropriations to bring the budget into line with revised projections.					
4	Reduce Funding to Office of Economic Opportunity	(\$200,000)	R	(\$200,000)	R
Reduces funding to the Office of Economic Opportunity due to increased federal receipts.					
(2.00) Division of Medical Assistance					
5	Increase Drug Rebate Receipts	(\$12,606,396)	R	(\$18,481,741)	R
Increases receipts from the Drug Rebate Program due to the increased expenditures for prescription drugs.					
6	Revise Forecast	(\$19,096,115)	R	(\$30,070,813)	R
Reduces appropriations to reflect the most current projections for the Medicaid Program.					
7	Reduce Inflation for Most Services by 20%	(\$3,895,412)	R	(\$4,251,124)	R
Reduces inflationary increases for most services by 20%.					
8	Eliminate Intensity Increases	(\$24,180,718)	R	(\$26,058,464)	R
Eliminates all policy changes which would increase the continuation budget.					

Conference Report on the Continuation, Capital, and Expansion Budget		FY 99-2000		FY 2000-01	
9 Adjust Carolina Alternatives		(\$2,500,000)	R	(\$2,500,000)	R
Reduces state funding for the Carolina Alternatives program due to a change in the cost-sharing formula.					
10 Reduce Administrative Overhead		(\$64,073)	R	(\$64,714)	R
Reduces expenditures for printing and postage due lower utilization by Work first eligibles.					
11 Transfer Reserve Funds		(\$16,000,000)	R	(\$16,000,000)	R
Transfers funds from the G.S. 143-23.2 reserve to support current services and to reduce appropriations.					
		(\$55,000,000)	NR	\$0	NR
12 Reduce Inflation for Hospitals/Nursing Homes		(\$5,044,920)	R	(\$5,399,610)	R
Reduces inflationary increases for hospitals and nursing homes by 20%.					
13 Lower Utilization for NC Health Choice					
Reduces expenditures because utilization of the NC Health Choice Program will be lower than the initial projections for 1999-2000.					
		(\$1,900,000)	NR	\$0	NR
14 Lower Utilization by Work First Eligibles		(\$21,702,472)	R	(\$23,319,692)	R
Reduces expenditures because utilization by Work First recipients is projected to be lower.					
(3.00) Division of Social Services					
15 Adjust State/County Special Assistance					
Reduces funding to reflect an October 1, 1999 start date for rate increase.					
		(\$1,036,000)	NR	\$0	NR
16 Reduce Work First Reserve					
Reduces funds in the Work First Reserve.					
		(\$17,000,000)	NR	\$0	NR
17 Eliminate Vacant Positions		(\$14,476)	R	(\$14,476)	R
Eliminates 3.0 Computer Consultant II and IV positions.					
		-3.00		-3.00	
18 Increase Revenues					
Decreases appropriations in anticipation of increased revenues for prior year earned revenues based on actual experience.					
		(\$2,033,000)	NR	\$0	NR

Health and Human Services

Page G 2

Conference Report on the Continuation, Capital, and Expansion Budget		FY 99-2000		FY 2000-01	
19 Reduce Work First Automation Funds					
Reduces state funds for various automation projects.		(\$4,000,000)	NR	\$0	NR
(4.00) Div. of Services for Deaf/Hard of Hearing					
20 Eliminate Vacant Positions					
Eliminates five positions: Administrative Officer II, Guidance Counselor, Parent Trainer, Staff Development Specialist II, and Deaf-Blind Program Consultant.		(\$169,728)	R	(\$169,728)	R
		-5 00		-5 00	
(5.00) Div. of Services for the Blind					
21 Eliminate Vacant Positions					
Eliminates an Assistant Principal and a Processing Assistant II position.		(\$64,687)	R	(\$64,687)	R
		-2 00		-2 00	
(6.00) Division of Mental Health					
22 Reduce Thomas S. Class Funds					
Reduces funds for the formerly court mandated Thomas S. Program which was dissolved in January 1998. Maintains funding for adults who were members of the class at the time the federal court dissolved the class.		(\$3,900,000)	R	(\$3,900,000)	R
23 Reduce State Funds to DMH Schools/Facilities					
Reduces state appropriations for Wright and Whitaker Schools as well as the residential treatment programs for violent and assaultive children (located in Wilson and Butner) in anticipation of Medicaid revenues		(\$650,000)	R	(\$960,000)	R
24 Eliminate Waiting List Management Funds					
Eliminates funds appropriated for FY98/99 for nonrecurring purposes. These funds were originally appropriated from the Work First Reserve for one-time items.		(\$500,000)	R	(\$500,000)	R
25 Increase Patient Revenues					
Reduces state appropriations in anticipation of patient revenues at the various mental health facilities.		(\$1,300,000)	R	(\$2,500,000)	R
26 Eliminate Vacant Positions					
Eliminates 2.0 Community Employment Specialists I & II, 1.0 Food Service Assistant I, and 1.0 Housekeeping Supervisor II positions.		(\$78,722)	R	(\$78,722)	R
		-4 00		-4 00	

27 Eliminate Area Program Capital Reserves

Eliminates funds appropriated in 1994 for capital needs for area programs.

(\$500,000) NR

\$0 NR

(7.00) Division of Health Services**28 Eliminate Vacant Positions**

Eliminates four positions: Physician III-A, Processing Unit Supervisor V, Processing Assistant III, Office Assistant III

(\$185,558) R

(\$185,558) R

-2.75

-2.75

29 Reduce Tuberculosis Program Pharmaceutical Budget

Reduces Tuberculosis Program pharmaceutical budget to reflect program need.

(\$198,762) R

(\$198,762) R

30 Reduce AIDS Drug Assistance Program Funding

Reduces AIDS Drug Assistance Program (HIV Medications Program) funding due to increased federal receipts.

(\$1,000,000) R

(\$1,000,000) R

(8.00) Division of Facility Services**31 Reduce Fire Protection Loan Fund**

Eliminates uncommitted funding appropriated for the Fire Protection Loan Fund which is managed by the NC Housing Finance Agency.

(\$200,000) NR

\$0 NR

(9.00) Division of Mental Health**32 Union House**

Provides a grant-in-aid to construct a pschosocial treatment facility for seriously and persistently mentally ill individuals.

\$200,000 NR

\$0 NR

33 Camp Royall

Provides a grant-in-aid to the Autism Society of North Carolina to be used to complete Camp Royall, a camp for autistic children and adults.

\$471,000 NR

\$0 NR

34 First Step Farms

Provides a grant-in-aid to the Blue Ridge Area Mental Health Center for allocation to the First Step Farm of Western North Carolina, Inc. to increase contracted bed utilization.

\$158,000 R

\$158,000 R

35 Area Mental Health Program Merger

Provides funds to complete the merger of the Cleveland County and Gaston-Lincoln Area Authorities.

\$800,000 R

\$800,000 R

Health and Human Services

36 Autism Society Funds of NC

\$620,000

R

\$620,000

R

Provides funds to help support programs for autistic children and adults: \$200,000 for residential services, \$150,000 to expand advocacy and \$270,000 to provide weekend camping.

37 Violent and Assaultive Children

\$4,353,003

NR

\$0

NR

Provides funds for the formerly court mandated Willie M. Program to continue services for children identified as class members at the time the federal court dissolved the class in January 1998.

38 TEACCH

\$1,052,000

R

\$1,052,000

R

Provides funds to UNC-CH, Division of TEACCH Administration and Research to meet the expanding needs of people with autism. The funds shall be used as follows: \$434,693 for the Gastonia Center, \$236,345 for the Raleigh Satellite Center, \$199,472 for the Carolina Living and Learning Center Vocational Expansion and \$181,190 for administration and research. These funds shall not be used by UNC-CH for administrative costs.

39 Community Mental Health Programs

\$6,000,000

R

\$6,000,000

R

Provides expansion funds for community mental health programs to address the needs of individuals waiting for mental health, developmental disabilities and substance abuse services.

40 Early Intervention Services

\$203,000

R

\$610,000

R

Provides funding to develop an integrated client database and to establish a pilot site for a regional transdisciplinary team of experts to serve children ages birth through five years with low incidence disabilities, such as visual or hearing impairment or autism.

5 00

5 00

41 ACH Resident Assessment Services

\$302,866

R

\$609,953

R

Provides funding for professional mental health assessments and follow-up treatment services for residents in adult care homes who have been identified as posing a risk to other residents during the initial assessment. Effective January 1, 2000.

42 Deaf/Mentally Ill Services

\$247,000

R

\$247,000

R

Provides funds to expand services to individuals who are deaf and have mental illness. Services include specialized mental health treatment and residential support.

Conference Report on the Continuation, Capital, and Expansion Budget		FY 99-2000		FY 2000-01	
43 Mental Health Housing		\$495,000	R	\$495,000	R
Provides funds for residential services for the mentally ill including funds for clients who have a mental illness and are deaf.					
44 Area Mental Health Board Training		\$150,000	NR	\$0	NR
Provides funds for training for local area mental health authorities.					
45 Neurobehavioral Treatment Unit		\$571,526	R	\$571,526	R
Provides funds to establish a 12-bed unit at the Black Mountain Center for individuals with traumatic brain injury and who require behavioral health services.					
		\$120,246	NR	\$0	NR
		51 00		51 00	
(10.00) Office of the Secretary					
46 Human Services Grants-in-Aid		\$4,000,000	NR	\$0	NR
Reserve for grants-in-aid to public and non-profit human services organizations for programs that provide services to older adults, adults with disabilities, at-risk children and youth and families					
47 Prescription Drug Program for the Elderly		\$500,000	R	\$500,000	R
Provides start-up funding to establish a program to assist elderly persons with the purchase of outpatient prescription drugs.					
48 NC/Israel Project		\$99,000	NR	\$0	NR
Provides funds for the NC/Israel Project.					
49 ABCs Plan in DHHS Schools		\$400,000	R	\$400,000	R
Provides funding for professional development and to increase the pay grades of cottage and residential staff positions.					
(11.00) Division of Child Development					
50 T.E.A.C.H. Program		\$778,000	R	\$778,000	R
Provides funding to expand the Teacher Education and Compensation Helps (T.E.A.C.H.) Program.					
51 Touching the Lives of Children Program		\$300,000	R	\$300,000	R
Provides funding for the Touching the Lives of Children Program.					

52 Smart Start Services	\$58,000,000	R	\$78,928,826	R
Provides funding to expand direct services statewide.				
53 Smart Start Evaluation and Collaboration	\$165,000	R	\$165,000	R
Provides additional funding for program evaluation to accommodate the increased need for data collection and reporting resulting from statewide expansion. Also, provides funding for county collaboration for the Years 3 through 5 local partnerships.	\$1,500,000	NR	\$0	NR
(12.00) Division of Vocational Rehabilitation				
54 Independent Living (IL) Rehabilitation Program	\$1,000,000	R	\$1,000,000	R
Provides funding to alleviate the backlog of client needs at program offices statewide. The Department may establish up to 9 positions in the areas of rehabilitation engineering, casework technicians, and central office support. Provides funding for two IL Counselor/Care Coordinator positions to work with individuals with brain injuries and their families. The Department may use up to \$100,000 to contract with the NC State University's Center for Universal Design to provide technical assistance to the housing industry on design requirements for multifamily housing which improve accessibility for disabled individuals.	\$2,000,000	NR	\$0	NR
	11 00		11 00	
55 NC Assistive Technology Project	\$398,533	R	\$398,533	R
Provides funding to support the Assistive Technology Demonstration Centers in providing technical assistance, training, and equipment loans to individuals with disabilities and their families.				
(13.00) Division of Health Services				
56 Royall Children's Vision Screening Improvement Pgm	\$419,000	R	\$419,000	R
Provides funding for a statewide training and certification program for school-based vision screeners.				
57 Healthy Start Foundation	\$650,000	NR	\$0	NR
Provides funding for the statewide public information and education activities of the First Step Campaign and for local communities to implement pilot programs aimed at reducing infant mortality.				
58 Osteoporosis Task Force	\$150,000	NR	\$0	NR
Provides funding to continue support for the Osteoporosis Task Force.				

59 State Games of North Carolina

Provides funding for the Governor's Council on Physical Fitness to support the State Games.

\$200,000

NR

\$0

NR

60 Arthritis Prevention Project

Continues grant-in-aid for private, local project providing services for arthritis patients in Mecklenburg County.

\$25,000

NR

\$0

NR

61 SUD Program

Provides funding to start-up and operate improved, intensive investigation of sudden unexpected deaths of infants and young children.

\$190,000

R

\$190,000

R

2.00

2.00

62 Cancer Control Program

Provides funding to the Advisory Committee on Cancer Coordination and Control to promote the prevention, early detection, data collection, and optimal care in the control of cancer.

\$250,000

R

\$250,000

R

63 Pediatric Cancer Services

Provides funding for pediatric cancer awareness, victim assistance, and clinical trials of experimental treatments.

\$250,000

NR

\$0

NR

64 Asthma Education Program

Provides funding to support asthma management, control, surveillance, and education.

\$250,000

NR

\$0

NR

65 Hepatitis C Education Awareness

Provides funding for Hepatitis C education and awareness activities.

\$150,000

NR

\$0

NR

66 Central Cancer Registry

Provides funding for additional Central Cancer Registry personnel.

\$200,300

R

\$200,300

R

5.00

5.00

67 Healthy Carolinians

Provides funding for the creation of Healthy Carolinian Task Forces throughout the state.

\$1,000,000

NR

\$0

NR

68 Birth Defects Monitoring Program

Provides funding to initiate the development of a birth defects registry.

\$100,000

NR

\$0

NR

69 Heart Disease and Stroke Prevention

Provides funding to the Heart Disease and Stroke Prevention Task Force for implementation of the NC Plan to Prevent Heart Disease and Stroke, 1999-2003.

\$100,000 NR \$0 NR

70 Office of Minority Health

Provides funding to support Office of Minority Health activities.

\$150,000 NR \$0 NR

(14.00) Division of Services for the Blind**71 Early Intervention Services**

Provides funding to expand early intervention services for visually-impaired children ages birth through five years.

\$225,000 R \$225,000 R
3 00 3 00

72 Governor Morehead School

Provides funding for library materials, textbooks, and education-related technology.

\$50,000 R \$50,000 R

(15.00) Division of Social Services**73 Local Adoption and Foster Care Workers**

Provides funding for additional social work staff (hired on or after July 1, 2000) in local departments of social services to recruit, train, license and support foster care and adoptive families and to provide interstate and post-adoption services.

\$0 R \$159,000 R

74 Project Homestead Pilots

Provides funds to initiate pilot programs for employment training activities which would target unskilled and underskilled individuals such as current or former TANF recipients, non-custodial parents and previously incarcerated individuals.

\$200,000 NR \$0 NR

75 State Maternity Homes Fund

Provides funds to bring the budget in line with actual expenditures.

\$250,000 R \$250,000 R

76 Family Success Initiative/Pilots

Provides funds for pilot programs targeting at-risk children and families.

\$250,000 NR \$0 NR

77 ACH Resident Assessment Services

Provides funding to establish adult care home positions in the Department and in county departments of social services.

\$631,200 R \$1,271,200 R

78 Food Banks

Provides funds for the Second Harvest Food Banks as follows: \$1,000,000 NR \$0 NR

Food Bank of Albemarle	\$166,667
Food Bank of North Carolina	166,667
MANNA Food Bank	166,667
Second Harvest Food Bank of Metrolina	166,667
Second Harvest Food Bank of Northwest North Carolina	166,666
Second Harvest Food Bank of Southeast North Carolina	166,666

79 Special Assistance Personal Needs Allowance

\$750,000 R \$750,000 R

Increases the monthly personal needs allowance for State/County Special Assistance recipients from \$31 to \$36.

80 Adult Protective Services

\$1,000,000 R \$2,000,000 R

Provides additional funds to support additional social worker positions providing adult protective services through local departments of social services.

(16.00) Division of Aging**81 Alzheimer's Association**

\$50,000 R \$50,000 R

Increases funding for the three chapters of the North Carolina Alzheimer's Association.

82 Start-up Grants For Adult Day Care Programs

Provides funding for up to 10 start-up grants for new Adult Day Care Programs. \$250,000 NR \$0 NR

(17.00) Division of Facility Services**83 Complaint Investigations**

\$111,375 R \$222,750 R

Provides funding for 15 nurse consultants to improve the timeliness of complaint investigations in long term care facilities. Effective January 1, 2000.

15.00

15.00

84 Group Care Monitoring Staff

\$781,617 R \$731,809 R

Provides 15 additional positions to monitor group care facilities including one administrative position for Adult Care Home Certification.

15.00

15.00

Health and Human Services

Conference Report on the Continuation, Capital, and Expansion Budget	FY 99-2000		FY 2000-01	
(18.00) Division of Medical Assistance				
85 Physician Rates	\$3,600,000	R	\$3,800,000	R
Increases physician rates to match Medicare rates.				
86 Expand Transitional Medicaid to 24 Months	\$2,073,000	R	\$8,271,143	R
Expands transitional Medicaid for former TANF recipients from 12 to 24 months. Effective no earlier than October 1, 1999.				
(19.00) Div. Of Services for Deaf/Hard of Hearing				
87 Cued Speech Center, Inc.	\$135,000	R	\$135,000	R
Provides a grant-in-aid for the Cued Speech Center, Inc. for preschool, transitional, and resource services.				
88 North Carolina School for the Deaf	\$275,000	R	\$302,600	R
Provides funding for 4 positions (Occupational Therapist III, Physical Therapist III, Staff Development Specialist, and Community Employment Specialist II), establishment and operational support of a video networking site, library materials and automation, an elevator in the elementary school, and playground equipment.	\$275,000	NR	\$0	NR
	4 00		4 00	
Total Legislative Changes	(\$31,402,790)	R	(\$24,039,619)	R
	(\$63,775,751)	NR	\$0	NR
Total Position Changes	92.20		92.20	
Revised Budget	(\$5,858,243)		\$66,100,352	



Section H: Natural and Economic Resources

2nd Edition by Kenneth W. C. Chan and John W. C. Chan

Housing Finance Agency

GENERAL FUND			
	FY 99-2000		FY 2000-01
Recommended Budget	\$2,300,000		\$2,300,000
Legislative Changes			
Housing Trust Fund			
1 Housing Trust Fund	\$3,000,000	R	\$3,000,000 R
Provides funds to support the Housing Trust Fund. Of this amount, \$500,000 annually, and an additional \$2,000,000 for the 1999-2000 fiscal year, is earmarked for affordable housing for the elderly.	\$6,000,000	NR	
Total Legislative Changes	\$3,000,000	R	\$3,000,000 R
	\$6,000,000	NR	
Total Position Changes			
Revised Budget	\$11,300,000		\$5,300,000

Agriculture and Consumer Services

GENERAL FUND

	FY 99-2000		FY 2000-01
Recommended Budget	\$53,633,433		\$53,590,208

Legislative Changes

Administrative Services

2 Eliminate Vacant Position	(\$28,792)	R	(\$28,792)	R
Eliminate vacant Accounting Clerk IV position.				
	-1.00		-1.00	
3 Information Technology Improvements	\$29,600	R	\$29,600	R
Provides funds to purchase office automation software and to cover costs associated with the IRMC policy requiring agencies to connect and store e-mail messages in a central message store, maintained by State Information Processing Services.	\$55,000	NR		

Agricultural Statistics

4 Eliminate Vacant Position/Reduce Operating Support	(\$53,854)	R	(\$53,854)	R
Eliminate vacant Processing Assistant IV position and reduce various operating line items.				
	-1.00		-1.00	
Processing Assistant IV	(\$26,854)			
Operating support	(\$27,000)			

Agronomic Services

5 Eliminate Vacant Position/Reduce Operating Support	(\$75,705)	R	(\$75,705)	R
Eliminate vacant Chemistry Tech III position and reduce various operating line items.				
	-1.00		-1.00	
Chemistry Tech III	(\$40,955)			
Operating Support	(\$34,750)			

Commissioner's Office

6 Small, Family Farms - Marketing and Promotion	\$50,000	NR		
Funds to provide marketing and promotional assistance to small, family farms.				

Agriculture and Consumer Services

Conference Report on the Continuation, Capital, and Expansion Budget		FY 99-2000		FY 2000-01	
7 Local Agricultural Fairs Grant Funds					
Funds for local agricultural fairs.		\$50,000	NR		
8 Farmland Preservation Trust Fund					
Provides funds to the Farmland Preservation Trust Fund for the acquisition of agricultural conservation easements to protect rural lands, particularly in the vicinities of urban growth areas and near waterways and other environmentally sensitive areas.		\$500,000	NR		
Department Wide					
9 Reduce Operating Support		(\$6,000)	R	(\$6,000)	R
Reduce operating support associated with vacant positions recommended for elimination by the Governor.					
Food and Drug Protection					
10 Reduce Operating Support		(\$55,000)	R	(\$72,500)	R
Reduce various operating support line items.					
11 Pesticide Disposal Assistance Program		\$90,000	R	\$90,000	R
Provides funds to support one position and operating costs associated with the department's program for the disposal of banned, obsolete, or unwanted pesticides.		\$10,000	NR		
		1.00		1.00	
Grants-in-Aid					
12 Duplin County Agricultural Center		\$500,000	NR		
Provides funds to be used as a match to secure federal and private funding for the county's agricultural center.					
Markets					
13 Goodness Grows in North Carolina		\$200,000	R	\$200,000	R
Funds to expand the Goodness Grows in North Carolina advertising program.					
14 Seafood and Aquaculture Marketing		\$300,000	R	\$300,000	R
Funds to market the state's seafood and aquaculture industries through marketing promotions, trade shows, advertising, and promotional literature.					

15 Local Farmers' Markets Funds

Funds to provide grants for local farmers' markets.

\$100,000 NR

Plant Industry**16 Gypsy Moth Control Funds**

Funds to support the department's program to control the gypsy moth.

\$110,320 NR

Research Stations and State Farms**17 Eliminate Vacant Position**

Eliminate vacant Agricultural Research Assistant III position.

(\$30,325) R (\$30,325) R

-1.00 -1.00

18 Oxford Research Station Funds

Provides operating support for activities at the Oxford Research Station due to the federal government withdrawing support from this site.

\$196,346 R \$196,346 R

\$17,000 NR

2.00 2.00

19 Specialty Crops Funds

Funds to support further development of the specialty crops program at the Cunningham Research Farm (Kinston) as a joint program with North Carolina State University.

\$100,000 NR

20 Center for Environmental Farming Systems

Provides equipment funds for the Center for Environmental Farming Systems at Cherry Farm.

\$100,000 NR

Reserves and Special Funds**21 Reduce N.C. Warehouse Act Fund**

Reduce department's general fund appropriation for the 1999-2000 fiscal year and replace the funds with a one-time transfer from the N.C. Warehouse Act fund, thereby reducing the fund's cash balance.

(\$200,000) NR

22 Southern Dairy Compact Commission Funds

Funds to support the start-up costs of the Southern Dairy Compact Commission and the initial costs of administration and enforcement of the Southern Dairy Compact.

\$500,000 NR

Agriculture and Consumer Services

Rural Rehabilitation Corporation

23 Small, Family-Owned Farms Loan Program

Continues the small, family-owned farms loan program to provide loan funds to farms having difficulty in obtaining affordable conventional loans from other sources.

\$400,000 NR

Structural Pest Control

24 Eliminate Vacant Positions

(\$133,547) R (\$133,547) R

Eliminate vacant positions in the Structural Pest Division:

-3 00 -3 00

Pesticide Specialist II (\$40,814)

Structural Pest Asst Director (\$57,903)

Structural Pest Inspector (\$34,830)

Veterinary Services

25 Reduce Pseudorabies Program

(\$50,000) R (\$50,000) R

Reduce support for the pseudorabies program as disease nears eradication.

26 Eliminate Vacant Position

(\$41,865) R (\$41,865) R

Eliminate vacant Animal Health Technician I position.

-1 00 -1 00

27 Field Automation/Salmonella Sampling

\$133,035 R
\$313,773 NR

Funds to provide equipment and training to support field automation and electronic data transmission in the Field Automation Information Management (FAIM) program. Also provides funds to facilitate the sampling and laboratory analysis of ground meats and carcasses for salmonella.

28 Equine Infectious Anemia Funds

\$100,000 R \$100,000 R

Provides operating support to enforce a mandatory testing program of equines for equine infectious anemia prior to sale or prior to exhibition or assembly at public stables or other public places.

1 00 1 00

Agriculture and Consumer Services

Total Legislative Changes	\$573,893	R	\$556,393	R
	\$2,606,093	NR		
Total Position Changes	-4.00		-4.00	
Revised Budget	\$56,813,419		\$54,146,601	

Labor

GENERAL FUND

	FY 99-2000	FY 2000-01
Recommended Budget	\$16,457,031	\$16,457,031

Legislative Changes

Administrative Programs

29 Eliminate Vacant Position	(\$25,338)	R	(\$25,338)	R
Eliminate vacant Processing Assistant III position located in the Commissioner's Office.	-1 00		-1 00	

Boiler Safety Bureau

30 Expand Inspection Staff with Receipt Support

Adds four boiler inspectors to conduct safety inspections. Funds will be provided with increased receipts generated by inspections conducted with these additional positions.

	FY 1999-2000	FY 2000-2001
Requirements	\$235,000	\$235,000
Receipts	(\$235,000)	(\$235,000)
Appropriation	0	0

Department Wide

31 Reduce Operating Support	(\$12,434)	R	(\$12,434)	R
Reduce various operating and equipment line items throughout the department.				

Elevator and Amusement Device Bureau

32 Expand Inspection Staff with Receipt Support

Adds two elevator inspectors to conduct safety inspections in the Raleigh and Charlotte areas. Funds will be provided with increased receipts generated by inspections conducted with these additional positions.

	FY 1999-2000	FY 2000-2001
Requirements	\$115,852	\$115,852
Receipts	(\$115,852)	(\$115,852)
Appropriation	0	0

Conference Report on the Continuation, Capital, and Expansion Budget	FY 99-2000		FY 2000-01	
33 Reduce Funds for Travel	(\$17,340)	R	(\$17,340)	R
Eliminate continuation budget increase for in-state travel.				
Occupational Safety and Health				
34 Eliminate Vacant Position	(\$54,668)	R	(\$54,668)	R
Eliminate vacant Applications Analyst Programmer I position.				
	-1.00		-1.00	
Research and Information Technology				
35 Information Technology Funds	\$22,000	R	\$22,000	R
Funds to support the costs of implementing the IRMC policy requiring agencies to connect and store e-mail messages in a central message store maintained by State Processing Information Services. Funds also support the implementation of an Enterprises Document Management System.	\$100,000	NR		
Total Legislative Changes	(\$87,780)	R	(\$87,780)	R
	\$100,000	NR		
Total Position Changes	-2.00		-2.00	
Revised Budget	\$16,469,251		\$16,369,251	

Environment and Natural Resources

GENERAL FUND

Recommended Budget		FY 99-2000		FY 2000-01	
		\$152,272,341		\$153,992,565	
Legislative Changes					
(1.00) Administration					
36	Eliminate Vacant Positions & Salary Reserve	(\$66,715)	R	(\$66,715)	R
	Eliminate vacant administrative positions and salary reserve:				
		-3.10		-3.10	
	Salary Reserve (\$13,838)				
	Controller's Office				
	Internal Auditing Manager I (0.10 FTE) (\$8,021)				
	Accounting Clerk IV (2.00 FTEs) (\$39,907)				
	Information Technology Services				
	Data Base Administrator (1.00 FTE) (\$4,949)				
(1.00) Regional Offices					
37	Shift Position to Receipt Support	(\$69,644)	R	(\$69,644)	R
	Shift funding for Computing Consultant IV position to receipt support.	-1.00		-1.00	
(2.00) Aquariums					
38	Reduce Operating Support	(\$88,009)	R	(\$88,009)	R
	Reduce operating support line items at the aquariums				
(2.00) Forest Resources					
39	Eliminate Vacant Position & Reduce Salary Reserve	(\$51,966)	R	(\$51,966)	R
	Eliminate vacant Pilot III position and reduce salary reserve.				
		-1.00		-1.00	
	Pilot III (\$51,188)				
	Salary Reserve (\$778)				
40	Equipment Reduction				
	Delay replacement of fire-fighting helicopters by one year.	(\$2,100,000)	NR		

41 Division Wide Reductions

Reduce various operating/equipment line items throughout the division.

(\$400,000) R
(\$180,000) NR

(\$400,000) R

42 Assistant County Ranger

Funds to support an Assistant County Ranger position in Nash County.

\$23,309 R
\$24,511 NR
1.00

\$23,309 R
1.00

(2.00) Marine Fisheries**43 Eliminate Vacant Position**

Eliminate vacant Research Vessel Crew Member position.

(\$25,555) R
-1.00

(\$25,555) R
-1.00

44 Increase Budgeted Receipts

Increase the budgeted amount of license receipts to reflect increased revenue from the sale of commercial and recreational commercial gear fishing licenses as a result of the Fisheries Reform Act of 1997.

(\$150,000) R

(\$150,000) R

45 Information Technology Funds

Funds to continue consolidation and modernization of existing computerized information management systems to facilitate access to licensing, permitting, commercial landings, biological and habitat data.

\$1,000,000 NR

(2.00) Museum of Natural Sciences**46 Eliminate Position and Reduce Equipment**

Eliminate Scientific Illustrator position at the Museum of Natural Sciences and reduce equipment line items.

(\$58,316) R
-1.00

(\$58,316) R
-1.00

Scientific Illustrator (\$43,316)
Equipment (\$15,000)

47 Eliminate Vacant Position & Reduce Salary Reserve

Eliminate vacant Program Assistant IV position and reduce salary reserve.

(\$44,810) R
-1.00

(\$44,810) R
-1.00

Program Assistant IV (\$36,416)
Salary Reserve (\$ 8,394)

48 Grassroots Science Museums

\$2,785,000	R	\$2,785,000	R
\$250,000	NR		

Additional funds to expand the Grassroots Science program and to add three new museums to the program:

Aurora Fossil Museum
Colburn Gem and Mineral Museum
Granville County Museum - Harris Gallery

(2.00) N.C. Zoological Park**49 Eliminate Vacant Position**

(\$8,614)	R	(\$8,614)	R
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Eliminate vacant Groundworker position at the N.C. Zoological Park.

-0.50		-0.50	
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50 Reduce Equipment

(\$92,487)	R	(\$92,487)	R
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Reduce equipment line item in the N.C. Zoological Park.

(2.00) Office of Environmental Education**51 Reduce Operating Support**

(\$6,291)	R	(\$6,291)	R
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Reduce various operating support line items in the Office of Environmental Education.

52 Environmental Education Grant Funds

\$200,000	NR		
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Funds to provide grants to public schools K-12, public libraries and environmental education centers to purchase environmental education materials and to support school group field trips to environmental education centers.

(2.00) Parks and Recreation**53 Eliminate Vacant Position**

(\$22,948)	R	(\$22,948)	R
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Eliminate vacant Office Assistant III position.

-1.00		-1.00	
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54 Delay Operating Reserve Increase

(\$876,598)	R	\$65,969	R
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Delay increase in division's continuation budget operating reserve for capital projects.

\$365,500	NR
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55 Expand Natural Heritage Program

\$50,000	NR		
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Funds to inventory natural areas in counties that have not been surveyed under the Natural Heritage program.

(2.00) Soil and Water Conservation

56 Agriculture Cost Share County Technical Assistance

\$50,000

R

\$50,000

R

Additional funds to reimburse counties up to 50% of the costs of providing technical assistance in the planning, design and installation of agricultural best management practices (BMPs) to improve water quality.

57 NC Conservation Reserve Enhancement Program (CREP)

\$353,044

R

\$353,044

R

Funds to administer the CREP program, a state-federal partnership to enroll 100,000 acres of agricultural cropland adjacent to rivers, streams, estuarine waters and wetlands in long-term conservation easements. The focus of the program will be development of riparian buffers in the Chowan, Neuse and Tar-Pamlico River Basins and the Lake Jordan watershed.

\$153,000

NR

4 00

4 00

(3.00) Air Quality

58 Shift Position to Receipt Support

(\$38,992)

R

(\$38,992)

R

Shift funding for an Environmental Chemist I position to fuel tax receipts.

-1 00

-1 00

59 Increase Budgeted Receipts

(\$100,000)

R

(\$100,000)

R

Increase the budgeted amount of program receipts and reduce the division's general fund appropriation by an equal amount.

(3.00) Coastal Management

60 Reduce Grants

(\$100,000)

NR

Reduce land-use planning grants to local governments for one year.

(3.00) Environmental Health

61 Eliminate Vacant Positions

(\$55,217)

R

(\$55,217)

R

Eliminate vacant environmental health positions

-1 50

-1 50

Environmental Technician III (0.50 FTE)

(\$16,225)

Environmental Health Reg'I Specialist (1.00 FTE)

(\$38,992)

62 Eliminate Position and Operating Support	(\$29,801)	R	(\$29,801)	R
Eliminate partial position and reduce operating support in the Public Water Supply program:	-0.50		-0.50	
Operating Funds (\$887)				
Water/Wastewater Treatment Plant Consultant (\$28,914)				
63 Reduce Equipment	(\$25,725)	R	(\$25,725)	R
Reduce equipment replacement funds in the Shellfish Sanitation program.				
64 Food Sanitation Program	\$100,000	NR		
Funds to provide training and continuing education to local environmental health specialists to improve the consistency of implementation and enforcement of food sanitation rules.				
(3.00) Land Resources				
65 Eliminate Vacant LLRW Position	(\$42,907)	R	(\$42,907)	R
Eliminate vacant Geologist II position assigned to the low level radioactive waste project	-1.00		-1.00	
66 Shift Position to Receipt Support	(\$52,929)	R	(\$52,929)	R
Shift funding for an Environmental Engineer I position in the sedimentation program to receipt support.	-1.00		-1.00	
67 Reduce Operating Support	(\$65,696)	R	(\$65,696)	R
Reduce various operating support line items in the division.				
68 Sedimentation and Erosion Control Expansion	\$756,399	R	\$756,399	R
Funds for additional field staff to perform erosion and sediment control inspections at commercial and residential development sites to determine compliance with required management practices to minimize the impact of land disturbing activities on water quality. Funds will also be used to provide technical training and incentives to local governments to start and improve sediment control programs.	\$307,773	NR		
	10.00		10.00	
(3.00) Pollution Prevention/Environmental Assist.				
69 Eliminate Pollution Prevention Challenge Grants	(\$70,000)	R	(\$70,000)	R
Eliminate funding for pollution prevention challenge grants for business and industry.				

(3.00) Radiation Protection

70 Reduce LLRW Positions	(\$67,016)	R	(\$67,016)	R
Eliminate two positions assigned to the low level radioactive waste project (LLRW):	-2.00		-2.00	

Environmental Radiation Specialist (\$42,907)
Data Entry Specialist (\$24,109)

71 Reduce Rental/Lease Costs	(\$17,275)	R	(\$51,825)	R
Reduce continuation budget inflationary increase for office/lab space rental to reflect actual lease agreement.				

(3.00) Waste Management

72 Reduce Superfund Matching Funds/Cash Balance	(\$800,000)	R	(\$800,000)	R
Eliminate recurring appropriation to match federal funds to cleanup contaminated hazardous waste sites on the National Priority List (NPL) of Superfund sites. Also reduce the department's general fund appropriation for the 1999-2000 fiscal year by \$200,000 and replace the funds with a one-time transfer from the Superfund Cost Share Fund, thereby reducing the fund's cash balance.	(\$200,000)	NR		

(3.00) Water Quality

73 Eliminate Vacant Positions	(\$120,749)	R	(\$120,749)	R
Eliminate vacant water quality positions:	-3.00		-3.00	

Community Planner II (\$40,814)
Environmental Specialist II (\$37,681)
Environmental Engineer I (\$42,254)

74 Reduce Equipment	(\$300,000)	NR		
Reduce continuation budget increase for equipment replacement.				

75 Increase Budgeted Receipts	(\$150,000)	R	(\$150,000)	R
Increase budgeted receipts for the animal waste compliance program and reduce the general fund appropriation by an equal amount.				

Environment and Natural Resources

76 Eliminate Pesticide Study Positions

(\$100,000)	R	(\$100,000)	R
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Eliminate two positions assigned to work with the Department of Agriculture and Consumer Services on a study of pesticide contamination in groundwater and the development of statewide pesticide management plans.

-2.00		-2.00	
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Hydrogeologist II	(\$44,111)
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Hydrogeological Technician I	(\$35,448)
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Operating Funds	(\$20,441)
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77 Groundwater Quality Protection

\$537,111	R	\$700,020	R
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Funds to characterize and evaluate aquifers in the piedmont and mountain areas of the state to help define areas of highly vulnerable groundwater and to begin development of a long-term groundwater protection plan.

\$22,000	NR		
8.00		8.00	

78 Protect Buffers and Wetlands

\$339,467	R	\$339,467	R
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Funds to administer the state's riparian buffer protection requirements, compensatory mitigation program and restoration fund. Funds also to improve compliance with 401 Water Quality Certifications issued by the state.

\$46,000	NR		
8.00		8.00	

(3.00) Water Resources**79 Reduce Operating Support**

(\$52,888)	R	(\$52,888)	R
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Reduce operating support line items in the division

(4.00) Department Wide**80 Reduce Operating Support**

(\$21,900)	R	(\$21,900)	R
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Reduce operating support associated with vacant positions recommended for elimination by the Governor.

81 Surplus Property - Increase Receipts

(\$50,000)	NR		
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Increase the amount of budgeted receipts from the sale of surplus property for the 1999-2000 fiscal year and reduce the department's general fund appropriation by an equal amount.

(5.00) Reserves and Special Funds

82 Eliminate Cash Balance - Beach Erosion Loan Fund

Reduce department's general fund appropriation for the 1999-2000 fiscal year and replace the funds with a one-time transfer from the Beach Erosion Loan Fund. This reduction eliminates the cash balance in the loan fund.

(\$250,000) NR

83 Cape Fear River Assembly, Inc.

Funds for programs to monitor and improve water quality of the Cape Fear River.

\$500,000 NR

84 Chatham LLRW Facility Siting Assistance Funds

Grant-in-aid to Chatham County for expenses incurred as part of their participation in the licensing and siting of a low level radioactive waste facility.

\$100,000 NR

85 Partnership for the Sounds

Funds for ecotourism projects and programs. Funds are limited to existing projects and programs or any expansion recommended by the Board of Directors of the Partnership for the Sounds.

\$25,000 NR

86 Rivernet Water Quality Monitoring & Research Funds

Funds to implement a Rivernet pilot project in an area of the state with impaired waters using a technology-based water quality and nutrient monitoring system to monitor, collect and disseminate water quality data. Also provides research funds for collaborative water quality studies among DENR and any constituent institution of The University of North Carolina.

\$700,000 R
\$500,000 NR \$700,000 R

87 Resource Conservation and Development Councils

Funds to provide each of the state's nine Resource Conservation and Development Councils a \$25,000 grant to use as leverage for other grants to be allocated by each county in the regional council.

\$225,000 NR

88 Museum of Life and Science

Funds to support the BioQuest exhibit at the Museum of Life and Science.

\$1,000,000 NR

Environment and Natural Resources

89 Conservation Trust for North Carolina				
Funds to provide technical assistance and other support for North Carolina's private land trusts and to promote the State conservation tax credit program for land conservation.		\$150,000	NR	
(6.00) Wildlife Resources Commission				
90 Beaver Control Program		\$500,000	R	\$500,000 R
Provides support for the Beaver Control Program statewide.				
<hr/>				
Total Legislative Changes		\$2,271,282	R	\$3,342,208 R
		\$1,473,284	NR	\$365,500 NR
Total Position Changes		7 40		7.40
Revised Budget		\$156,016,907		\$157,700,273
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Commerce

GENERAL FUND

	FY 99-2000		FY 2000-01	
Recommended Budget	\$40,062,400		\$40,082,482	
Legislative Changes				
Administrative Services				
91 Increase Administrative Charges	(\$120,000)	R	(\$120,000)	R
Increase administrative charges for accounting and personnel services provided by the department to receipt supported regulatory commissions and agencies				
Business and Industry				
92 Eliminate Vacant Position	(\$27,646)	R	(\$27,646)	R
Eliminate vacant Program Assistant IV position.				
	-1.00		-1.00	
93 Marketing and Trade Missions	\$250,000	R	\$250,000	R
Funds to support the division's participation in marketing missions and at industry trade shows, and for general advertising purchases to promote economic development in the state.				
	\$250,000	NR		
94 Industrial Recruitment Competitive Fund	\$2,000,000	NR		
Continues support for the Industrial Recruitment Competitive Fund.				
Center for Entrepreneurship and Technology				
95 Eliminate Vacant Position	(\$68,669)	R	(\$68,669)	R
Eliminate vacant Deputy Director position for the former NC ACTS program.				
	-1.00		-1.00	
Community Assistance				
96 Councils of Government/Lead Regional Organizations	\$125,730	R	\$125,730	R
Provides additional funds for councils of government/lead regional organizations. This appropriation raises the total funding level to \$990,000 and allocates up to \$55,000 to each organization.				

97 Small Town Revitalization/County Planning Program

Funds to implement the Small Town Revitalization and County Planning Program to enhance economic development in Western North Carolina.

\$100,000 NR

Department Wide**98 Reduce Operating Support**

(\$6,000) R (\$6,000) R

Reduce operating support associated with vacant positions recommended by the Governor.

Energy Division**99 Eliminate General Fund Appropriation**

(\$192,367) R (\$192,367) R

Eliminate general fund appropriation and shift funding for three positions and operating support to receipts

-3.00 -3.00

Energy Division Director (\$73,279)

Administrative Secretary II (\$37,955)

Energy Division Section Chief (\$73,912)

Operating Support (\$ 7,221)

Executive Aircraft Operations**100 Reduce Aircraft Lease**

(\$200,000) R (\$200,000) R

Reduce appropriation for aircraft lease/purchase to reflect actual lease costs.

International Trade**101 Reduce Salary Funds for Contract Personnel**

(\$23,165) R

Eliminate continuation budget salary increase for contract personnel.

102 NC/Israel Partnership

Funds to foster economic development with Israel.

\$100,000 NR

Reserves and Transfers**103 Regional Economic Development Commissions**

\$1,800,000 R \$1,800,000 R

Increase support for the state's seven regional economic development commissions from \$4.275 million to \$6.075 million.

Commerce

104 Smart Growth, Infrastructure & Development Issues

Provides funds for a commission to study growth, infrastructure and development issues and recommend initiatives to promote comprehensive and coordinated local, regional, and state planning, facility financing and growth management.

\$200,000 NR

105 Job Loss Assistance Funds

Funds to assist counties having the greatest number of announced business closings and permanent layoffs in fiscal year 1998-1999 relative to total county population.

\$500,000 NR

Tourism, Film and Sports Development**106 Reduce Operating Support**

Reduce postage and telephone line items

(\$75,000) R

(\$75,000) R

107 Advertising and Marketing Funds

Funds to expand advertising and marketing campaigns designed to promote North Carolina as a travel and tourism destination.

\$2,000,000 R

\$2,000,000 R

108 Rural Tourism Development Grant Funds

Funds for the Rural Tourism Development Grant Program to encourage the development of new tourism projects and activities in the rural areas of the state

\$300,000 NR

109 Expand Heritage Tourism

Funds for staff and operating support at four new heritage tourism sites. One site will be located in eastern NC, one in western NC and the remaining two sites will be designated by the Secretary of Commerce.

\$200,000 R

\$200,000 R

4.00

4.00

Total Legislative Changes

\$3,686,048 R

\$3,662,883 R

\$3,450,000 NR

Total Position Changes

-1.00

-1.00

Revised Budget

\$47,198,448

\$43,745,365

State Aid to Non-State Entities

GENERAL FUND				
		FY 99-2000		FY 2000-01
Recommended Budget		\$2,000,000		\$2,000,000
Legislative Changes				
Grants-in-Aid				
110	Land Loss Prevention Project	\$450,000	R	\$450,000 R
	Funds to provide free legal representation to low-income, financially distressed farmers.			
111	N.C. Association of CDCs	\$400,000	R	\$400,000 R
	Provides funds to the N.C. Association of Community Development Corporations to provide training and technical assistance to community development corporations statewide.			
112	N.C. Minority Support Center	\$600,000	R	\$600,000 R
	Funds to provide technical assistance to community-based credit unions. Nonrecurring funds are to be used as a match for U.S. Department of Treasury funds for Community Development Financial Institutions, and other private or federal funds on a dollar for dollar basis.	\$1,000,000	NR	
113	Coalition of Farm and Rural Families	\$250,000	R	\$250,000 R
	Funds to foster economic development within the state's rural farm communities by offering marketing and technical assistance to small and limited resource farmers.			
114	Institute of Minority Economic Development	\$1,500,000	R	\$1,500,000 R
	Funds to foster economic development within the state through policy analysis, information and technical assistance, resource expansion, and support of community-based initiatives.			
115	N.C. Community Development Initiative	\$1,000,000	NR	
	Additional funds for the North Carolina Community Development Initiative, Inc. to support operating and program activity grants to mature community development corporations.			

116 4-H Clubs/Eastern North Carolina Livestock Arena

Provides funds for the construction of a facility to replace the Eastern North Carolina Livestock Arena. This facility will be available for horse- and swine-breeding stock auctions, cattle sales, and functions associated with the Future Farmers of America and 4-H Clubs.

\$100,000 NR

117 Technological Development Authority

Grant-in-aid to the NC Technological Development Authority for entrepreneurial support and infrastructure including creating new business incubators, enhancing existing incubators, developing capital formation initiatives and supporting research commercialization programs.

\$3,500,000 NR

118 Yadkin/Pee Dee Lakes Project

Grant-in-aid to support the Yadkin/Pee Dee Lakes Project's efforts to promote tourism and economic development.

\$100,000 NR

119 World Trade Center North Carolina

Provides funds to the World Trade Center North Carolina to support international trade education programs to small and medium sized businesses.

\$200,000 NR

Total Legislative Changes

\$3,200,000 R \$3,200,000 R

\$5,900,000 NR

Total Position Changes**Revised Budget**

\$11,100,000 \$5,200,000

N.C. Biotechnology Center

GENERAL FUND

	FY 99-2000	FY 2000-01
Recommended Budget	\$7,638,913	\$7,638,913
Legislative Changes		
N.C. Biotechnology Center		
120 Increase Biotechnology Funds		
Additional nonrecurring funds to continue biotechnology initiatives, programs, and activities.	\$2,000,000	NR
Total Legislative Changes		
	\$2,000,000	NR
Total Position Changes		
Revised Budget	\$9,638,913	\$7,638,913

Rural Economic Development Center

GENERAL FUND			
	FY 99-2000		FY 2000-01
Recommended Budget	\$3,907,338		\$3,907,338
Legislative Changes			
Administration			
121 Center Administration	\$200,000	R	\$200,000 R
Provides funds for administration of the Clean Water and Natural Gas Critical Needs Bond Act of 1998.			
Grant Programs			
122 Supplemental Funding Program			
Provides funds to support the Supplemental Funding Program for economic development projects, principally water and sewer, in rural areas.			
	\$1,500,000	NR	
123 Capacity Building Assistance Program			
Funds for the Capacity Building Assistance Program to pay all or a portion of the costs for providing technical and financial assistance for water and sewer projects.			
	\$1,500,000	NR	
Opportunities Industrialization Centers			
124 Reduce Appropriation for Pitt-Greenville OIC	(\$10,000)	R	(\$10,000) R
Reduce appropriation to the Rural Center for the OICs due to the closing of the Pitt-Greenville OIC and reallocate remaining funds to existing OICs in the amount of \$10,000 each.			
125 Additional Funds for OICs	\$160,000	R	\$160,000 R
Provides an additional \$40,000 to each of the existing four OICs, bringing their total funding to \$100,000 each.			
Total Legislative Changes	\$350,000	R	\$350,000 R
	\$3,000,000	NR	
Total Position Changes			
Revised Budget	\$7,257,338		\$4,257,338

State Information Processing Services

GENERAL FUND		
	FY 99-2000	FY 2000-01
Recommended Budget	\$0	\$0
Legislative Changes		
State Information Processing Services		
126 Continue N.C. Information Highway		
Provides nonrecurring funds to continue the N.C. Information Highway.	\$3,596,000	NR
Total Legislative Changes	\$3,596,000	NR
Total Position Changes		
Revised Budget	\$3,596,000	\$0



Section I: Justice and Public Safety

Section 6 - Judicial and Public Safety

Judicial

GENERAL FUND

	FY 99-2000		FY 2000-01
Recommended Budget	\$337,613,191		\$340,135,574
Legislative Changes			
1 Reduce Salary Reserve Funds	(958,363)	R	(\$1,007,767) R
Reduce Department's available salary reserve funds - these funds are generated by filling positions at a salary less than the budgeted salary authorized by the General Assembly.			
2 Reduce Worker's Compensation Funds	(200,000)	R	(\$200,000) R
Reduce funds for worker's compensation payments department-wide based on a decrease in the numbers of claims and expenses to date in FY 1998-99.			
3 Reduce Out of State Travel Expenses	(\$95,552)	R	(\$95,552) R
Reduce expenses for out of state travel department-wide.			
4 Eliminate Reserve for Operations	(\$405,612)	R	(\$405,612) R
Eliminate funds which have been used to cover unforeseen needs in the areas of postage, travel, etc. The Department believes existing appropriations are sufficient to cover these areas.			
5 Reduce Reserve for General Office Supplies	(\$106,983)	R	(\$106,983) R
Reduce funds used to purchase general office supplies for the department. This reduction will still allow the department to keep sufficient inventory in their warehouse.			
	(\$200,000)	NR	
6 Eliminate Vacant Positions	(\$142,367)	R	(\$142,367) R
Eliminates funds for the Special Projects Coordinator position and District Attorney investigator position located in District 6B.			
	-2.00		-2.00
7 Reduce Software Maintenance Agreements	(\$420,148)	R	(\$420,148) R
Reduce estimated increases for software license agreements in the Information Services Division based on revised contracts.			

8 Reduce Indigent Fund Requirements	(\$3,200,000)	R	(\$3,200,000)	R
Reduce estimated increases in indigent fund requirements based on revised projections of expenditures for capital and non-capital cases. Even with these reductions, the fund is being increased \$4.8m in FY 1999-00 and \$9.8m in FY 2000-01.				
9 Reduce Replacement Equipment Funds	(\$1,250,000)	NR		
Reduce funds for replacement office equipment (\$250,000) and computer related equipment (\$1,000,000) in FY 1999-00 by delaying replacement of certain items. This still provides \$3.75m in funds for FY 1999-00.				
10 Reduce Operating Funds Related to Non IV-D Cases	(\$601,078)	R	(\$601,078)	R
Reduce operating funds (paper, postage, envelopes, etc) related to transferring all non IV-D, non-wage withholding child support transactions to DHHS.				
11 Superior Court Judges	\$566,440	R	\$707,095	R
Provide funds for four Special Judges and one Resident Judge to be located in District 22, effective October 1, 1999.	\$38,236	NR		
	5 00		5 00	
12 District Court Judges	\$543,897	R	\$1,058,301	R
Provide funds for 9 additional District Court Judges to be located in Districts 2, 5, 13, 15A, 18, 19A, 26, 27A, and 30. All positions are effective January 1, 2000.	\$99,522	NR		
	9 00		9 00	
13 Judges Support Staff	\$192,809	R	\$314,683	R
Provide funds for two judicial assistant II's and 3 judicial assistant I's effective January 1, 2000. Also provides funds for a project coordinator in Superior Court District 38 and District Court District 15B effective October 1, 1999.	\$37,777	NR		
	7 00		7 00	
14 New Court Reporters / Increase Transcript Fee	\$240,061	R	\$434,037	R
Provide funds to establish 8 additional court reporter positions effective January 1, 2000. Also provides \$45,621 to increase reimbursement for transcripts from \$2.25 to \$2.35 per page.	\$49,848	NR		
	8 00		8 00	
15 Magistrate Positions	\$50,625	R	\$101,223	R
Provide funds for 3 additional magistrate positions to be located in Cumberland, Camden, and Union Counties. All positions are effective January 1, 2000.	\$15,783	NR		
	3 00		3 00	
16 Deputy Clerks of Court	\$158,816	R	\$313,775	R
Provide funding for 11 additional deputy clerk positions effective January 1, 2000.	\$44,836	NR		
	11 00		11 00	

17 Assistant District Attorneys

\$324,891 R \$644,868 R

Provide funding for nine assistant district attorney positions to be located in Districts 5, 10 (2 positions), 12, 13, 15A, 19A, 20, and 26. All positions are effective January 1, 2000.

\$58,887 NR
9.00 9.00

18 District Attorney Investigators

\$74,175 R \$148,476 R

Provide funds for three district attorney investigator positions to be located in Districts 5, 10, and 22. The position for District 10 shall be used to assist the violent offender task force program. All positions are effective January 1, 2000.

\$16,539 NR
3.00 3.00

19 District Attorney Support Staff

\$465,325 R \$926,275 R

Provide funds for 25 additional victim witness / legal assistant positions in anticipation of providing services to domestic violence misdemeanor victims as a result of the Victims Rights' legislation. All positions are effective January 1, 2000.

\$135,250 NR
25.00 25.00

20 Family Court Funds

\$611,399 R \$724,915 R

Provide funds to annualize the three existing programs operating in Districts 26 (Mecklenburg), 14 (Durham), and 20 (Anson, Stanly, Union, Richmond). These funds are used to provide case managers and support staff who assist judges in assigning cases that affect families (divorce, alimony, delinquency, abuse). Also provides funding for an administrator position for District 20 effective October 1, 1999.

15.00 15.00

21 Manage Indigent Fund

\$29,601 R \$59,253 R

Provide funds for an administrative assistant for indigent services who will assist in reviewing expenditures from the Indigent Defense Fund. Specific responsibilities include: 1) establishing guidelines and procedures for determining indigency, 2) reviewing the feasibility of establishing a uniform fee schedule for certain cases, and, 3) recommending alternatives for putting a management structure in place. The position is effective January 1, 2000.

\$7,096 NR
1.00 1.00

22 Other Judicial Position

\$38,825 R \$77,544 R

Provide funds for one appellate court reporter position effective January 1, 2000.

\$6,352 NR
1.00 1.00

23 Guardian Ad Litem Funds

\$482,804 R \$565,976 R

Provide funds to establish four district secretary positions effective January 1, 2000. Also provides \$400,000 to increase the rate paid to attorneys to assist in retaining experienced counsel.

\$20,992 NR
4.00 4.00

24 Court Management Pilot Program

Provide funds to establish two court management administrator positions to assist in implementing House Bill 1225. These positions will work with the coordinating judge in each pilot program.

\$150,000 NR
2.00

25 Transfer Indigent Funds for Capital Case Program

Allows the Department to transfer up to \$358,103 in FY 1999-00 and \$396,845 in FY 2000-01 from the Indigent Persons' Attorney Fee Fund to establish 3 assistant public defenders and 1 investigator to work specifically on capital cases.

\$0 R \$0 R
\$0 NR \$0 NR
4.00 4.00

26 Assistant Public Defenders from Indigent Fund

Allows the Department to transfer up to \$161,448 in FY 1999-00 and \$284,840 in FY 2000-01 from the Indigent Persons' Attorney Fee Fund to establish 4 additional assistant public defender positions. All positions are effective January 1, 2000.

\$0 R \$0 R
\$0 NR \$0 NR
4.00 4.00

27 Emergency Judge Pay

Provide funds to continue pay for emergency judges at \$300 per day as specified by the 1998 short session.

\$278,245 R \$278,245 R

28 Expand Family Court Programs / Education Funds

Provide funds to expand family court programs into three additional districts. These programs have specially trained judges who work with matters (divorce, alimony, abuse, custody, etc.) affecting the family. The funds would be used to hire 8 case managers effective January 1, 2000. Also provides \$75,000 to establish an educational program for parents who are parties to a custody or visitation action.

\$251,608 R \$428,216 R
\$40,000 NR
8.00 8.00

29 State Bar Funds

Provide additional funds to the State Bar to improve the administration of justice. This includes \$660,000 for Legal Services and \$340,000 for the Center for Death Penalty Litigation for each year of the 1999-2000 biennium.

\$1,000,000 R \$1,000,000 R

30 Drug Treatment Court

\$1,000,000 R

\$1,430,000 R

Provide funds to continue existing programs in Wake, Mecklenburg, Person/Caswell, Warren and Forsyth Counties; to complete implementation over the biennium of new programs started in 1998-99 in Durham, Vance, Wake District Court and Mecklenburg Superior Court; to provide state funds to the New Hanover program; and to continue to work with districts involved in planning new DTC programs. Unexpended funds from 1998-99 will be not revert and will be used to assist programs in 1999-2000. The new position is to continue the program coordinator in District #26 which was funded with nonrecurring funds in 1998-99.

1.00

1.00

31 Bad Check Programs

\$337,621 R

\$381,474 R

Provide funds to continue existing programs in Columbus, Durham, Rockingham, and Wake Counties. Also provides funds to expand the Columbus program to Bladen and Brunswick Counties and establishes a new program in New Hanover and Pender Counties. These programs are designed to reduce the amount of time spent on prosecuting these cases, and to assist worthless check victims in recovering restitution.

\$12,778

NR

10.00

10.00

32 Community Mediation Center Funds

\$350,000 R

\$350,000 R

Provide additional funds for community mediation centers statewide as recommended by the Mediation Network of North Carolina, Incorporated.

33 District Court Mediated Settlement Program

\$45,142 R

\$45,142 R

Provide funds to establish pilot programs in district court which assist in mediating equitable distribution, alimony, and child support issues.

1.00

1.00

34 Increase Community Penalties Funding

\$86,935 R

\$86,935 R

This item provides additional funding to contract programs around the state to allow them to increase salaries comparable to the state employee pay increase.

\$12,422

NR

35 Business Court Funds

Provide funds to Guilford County to rent space for the North Carolina Business Court.

\$52,000 NR

36 Funds for Indigency Screeners

Provide funds to establish an indigency screening program in Wake County. These funds will be allocated to Carolina Correctional Services Incorporated to establish positions who will be used to determine indigency of criminal defendants.

\$100,000 NR

Conference Report on the Continuation, Capital, and Expansion Budget		FY 99-2000		FY 2000-01	
37 Transfer All Non IV-D Transactions to DHHS		\$2,000,000	R	\$3,328,791	R
Provide funds to DHHS in order to cover the cost of processing all non IV-D, non-wage withholding child support transactions. These funds will be used to cover postage, telephone, personnel, and vendor charges associated with transferring this function from clerks' offices.					
38 Disaster Recovery Program		\$350,000	NR		
Provide funds to complete a disaster recovery program for court information systems. The funds will be used to do environmental impact analysis on existing systems and to determine an appropriate means of backing-up systems during disaster situations.					
Total Legislative Changes		\$2,999,116	R	\$7,225,717	R
		(\$201,682)	NR	\$0	NR
Total Position Changes		129 00		127.00	
Revised Budget		\$340,410,625		\$347,361,291	

Justice

GENERAL FUND

	FY 99-2000		FY 2000-01	
Recommended Budget	\$72,273,100		\$71,521,703	
Legislative Changes				
39 Reduce Funding to Replace SBI Vehicles				
The Governor's Continuation Budget recommends \$1,879,600 in 1999-2000 and \$917,000 in 2000-01 to replace SBI cars and trucks. Funding is reduced by \$103,900 in 1999-2000 and increased by \$123,918 in 2000-01. This will result in the SBI deferring replacement of approximately 7 vehicles from 1999 to 2000. Increased maintenance costs, increased purchase costs and decreased resale costs are reflected in these figures.	(\$103,900)	NR	\$123,918	NR
40 Eliminate Funding for Legal Services Bonuses	(\$93,453)	R	(\$93,453)	R
The Continuation Budget includes funds for annual bonuses for Legal Services attorneys based on outstanding job performance. The funding for this item is eliminated.				
41 Eliminate Information Systems Manager Position	(\$66,916)	R	(\$71,812)	R
Eliminate position for Information Systems Manager in the Legal Services Division. Information technology is being reorganized Department-wide and this position is no longer needed. Position is eliminated effective August 1, 1999.	-1.00		-1.00	
42 Reduce Safe Neighborhoods Program	(\$59,406)	R	(\$59,406)	R
Funding is reduced for the Safe Neighborhoods Program. Funds remain to continue the Information and Communication Specialist position currently staffing the program.				
43 Increase Realized Receipts for DCI Fees	(\$100,000)	R	(\$100,000)	R
The amounts received in fees for criminal record checks and for access to the DCI system have increased with the volume of activity. The increase in receipts allows a reduction in the General Fund appropriation to the Department.				
44 Reduction in Lease Expenses for DCI			(\$1,200,000)	R
The Division of Criminal Information will complete lease/purchase payments for their mainframe system in June 2000, allowing a \$1.2 Million reduction in the appropriation to the Department.				

Conference Report on the Continuation, Capital, and Expansion Budget	FY 99-2000		FY 2000-01	
45 Expansion Funding Division of Criminal Information	\$431,088	R	\$1,631,088	R
Funds are provided to the Division of Criminal Information as follows: \$131,088 in recurring funding for a disaster recovery plan; \$300,000 in 1999-2000 and \$91,600 recurring for upgrade of the system for new applications, with priority given to collecting and maintaining traffic enforcement statistics. If alternative funds are secured for this project, the \$300,000 may be used for other forms of upgrade. This leaves \$1.408 Million recurring from 2000-2001 on to be used to continue upgrading the system and implementing transition from the current mainframe system.				
46 NC LEAF	\$125,000	R	\$125,000	R
Provides recurring funds to the NC Legal Education Assistance Foundation to continue assisting public service attorneys with educational loan repayment.				
47 Minority Sensitivity Training	\$144,760	R	\$161,094	R
These funds allow the Criminal Justice Training and Standards Division to develop a program for minority sensitivity training for law enforcement, as mandated in the Juvenile Justice Act. Funds will allow the addition of 1 Criminal Justice Training Coordinator, contractual employees and media production for a train-the-trainers program. The position is effective October 1, 1999.	\$5,240	NR		
	1.00		1.00	
48 New Attorney	\$49,114	R	\$65,548	R
Funds allow the addition of one Attorney III to the Service to State Agencies section to represent Judicial Department personnel, effective October 1, 1999.	\$5,000	NR		
	1.00		1.00	
49 Paralegals for Tort Claims Section	\$57,214	R	\$76,285	R
Provide funds for two Paralegal II positions to work in the Tort Claims Section. This will allow the Section's attorneys to spend less time on routine tasks and more time on litigating their heavy case load. This increases the number of paralegals in the Section from 1 to 3. Both positions are effective October 1, 1999.	\$9,600	NR		
	2.00		2.00	
50 Sheriff's Standards Commission	\$29,039	R	\$37,052	R
Funding is provided to add a Criminal Justice Field Representative and to purchase software to automate the state examination process. The position is effective October 1, 1999.	\$2,250	NR		
	1.00		1.00	

51 Operational Funds for New Dormitory WJA	\$162,446	R	\$192,169	R
A new dormitory will be completed in August 1999 at the Western Justice Academy. This item provides recurring funds for a Criminal Justice Student Housing Coordinator, a Processing Assistant, a half-time Student Services Assistant, and utility costs. Nonrecurring funds are provided to furnish and equip the building. All positions are effective October 1, 1999.	\$142,000	NR		
	2.50		2.50	
52 New SBI Personnel to handle DNA testing	\$138,946	R	\$166,764	R
Funds are provided to add 2 DNA database technicians and \$100,000 for supplies needed for DNA analysis and maintenance of a DNA database. Positions are effective December 1, 1999.	2.00		2.00	
53 Justice Academy Bookstore Positions	\$0	R	\$0	R
Create two positions, a Stock Clerk and a Warehouse Manager, for the Bookstore at the Justice Academy at Salemburg. Recurring cost of the positions is \$40,693 but they will be funded entirely through receipts from the Bookstore.	2.00		2.00	
Total Legislative Changes	\$817,832	R	\$930,329	R
	\$60,190	NR	\$123,918	NR
Total Position Changes	10.50		10.50	
Revised Budget	\$73,151,122		\$72,575,950	

Office of Juvenile Justice

GENERAL FUND

Recommended Budget

FY 99-2000
\$130,037,966

FY 2000-01
\$130,954,378

Legislative Changes

54 Reduce Electronic House Arrest Funds

(\$100,000) R

(\$100,000) R

Reduce continuation budget from \$200,000 to \$100,000. \$100,000 will provide enough units to cover projected admissions and to provide surplus units while others are in repair.

55 Training School Positions

(\$1,000,000) R

(\$1,000,000) R

Due to increases in the training school population in 1998 and 1999, the Governor and OJJ recommended that 72 positions that had been funded as temporary positions be made permanent. Updated projections by the Sentencing Commission indicate that the training school population will decline to levels at or below current capacity (843 beds) for 1999-2001 due to the impact of the Juvenile Justice Act, which will shift misdemeanants (currently 46% of training school population) to the community under intermediate sanctions. The continuation budget included \$1,998,584 for the 72 positions for each year of the biennium. The Subcommittee recommends that \$923,584 be retained to establish 50 part time positions (25 FTE's) for transportation of juveniles (44 now funded from lapsed salaries) and that \$75,000 be used to fund an evaluation of training school and detention center staffing.

-47 00

-47 00

56 Local Juvenile Justice Programs

\$1,000,000 R

\$1,000,000 R

Provide funds to expand intermediate level and community level sanctions and programs for court involved juveniles. The Governor recommended funding of \$3,088,010. This amount is reduced because of the availability of \$5.5 million in funding in 98-99 that has not been expended, authorization of \$5.5 million each year in the continuation budget, and an influx of federal grant funds for juvenile programs. Of the \$1 million dollars, \$500,000 should be allocated to Boys and Girls Clubs in counties with high rates of training school commitments to provide services to court involved and at-risk juveniles.

57 Guard Response Funds (GRASP) Program

\$62,500	R	\$84,000	R
\$11,000	NR		

Provides funds to expand from four to six programs effective October 1, 1999. This program provides an after school program of regimented training and life skills for court involved and at risk youth. The Governor requested \$746,000 for expansion from three to 20 programs and establishment of regional administrators, but it is recommended that the programs be funded at a slower rate and evaluated prior to the year 2000 Short Session.

58 Juvenile Justice Information System Development

\$15,000	R	\$15,000	R
\$385,000	NR	\$385,000	NR

Provide funds to continue the implementation of a juvenile justice information system. These funds, along with federal funds provided through the Governor's Crime Commission, will be used to continue the needs assessment / user requirements phase of this project, complete a portion of the system design, and provide operating support for existing positions working on the project.

59 Funds for Eckerd Wilderness Camp

\$850,000	R	\$2,000,000	R
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Provide operating funds for a new Eckerd Wilderness Camp beginning January 1, 2000 on a partial basis with full operation by February 1.

60 Funding for Multipurpose Group Homes

\$800,000	R	\$2,000,000	R
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Provide operating funds for four 8-bed multipurpose group homes and one part time permanent clerical support position (\$14,184 October 1, 1999). The Governor requested \$1 million in expansion funds the first year. Based on available carryover funds from 1998-99 and staggered opening dates for the 4 homes, it is anticipated that \$800,000 will be adequate funding for 1999-2000.

0.75

0.75

61 Support Our Students

\$250,000	R	\$250,000	R
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Provide funds to expand the SOS program to additional counties in FY 1999-00. The program currently operates in 76 counties. The Governor requested \$975,000 each year; the recommended amount allows expansion for either part year funding of 6 more counties or full year funding for 3. Funding includes \$50,000 for one new technical assistance position and related support to bring total positions from 3 to 4 to manage and support a \$7.25 million dollar program.

1.00

1.00

62 Communities in Schools

\$450,000 R \$450,000 R

Communities in Schools is a non-profit organization that develops community "stay in school efforts" for at-risk children and court involved juveniles. The CIS program currently operates in 28 counties. The Governor recommended an expansion budget of \$700,000. The recommended budget allows for continuation of programs funded in 1998-99 and modest expansion.

63 Center for Prevention of School Violence

\$500,000 R \$500,000 R

This program, which operates within the UNC university system, provides research and technical assistance to schools and communities in preventing violence in the schools. The recommended funding is the same amount recommended by the Governor. Funds will be passed through from OJJ to the UNC system.

6 00 6 00

64 Juvenile Justice Institute

\$575,000 R \$575,000 R

Provide funds to establish a Juvenile Justice Institute at North Carolina Central University. The Institute will serve as resource for research and information on national and state juvenile justice practices; provide technical assistance to small non-profit community groups; and survey public and private groups on juvenile justice program effectiveness. Of these funds, \$75,000 shall go the Clinical Program at the North Carolina Central University School of Law to assist expansion of their work into family court, domestic violence cases, and alternative dispute resolution.

1 00 1 00

65 Teen Court Funds

\$105,000 R \$105,000 R

Provide funds to continue programs in Wake (\$25k), Guilford (\$20k), Duplin (\$20k), Durham (\$20k) and Onslow (\$20k) Counties. Teen courts provide a peer review of juveniles who have committed non-violent misdemeanors and recommend different types of punishment, including community service and restitution.

66 Juvenile Assessment Center

\$150,000 R \$150,000 R

Provide funds for the juvenile assessment center in District 12 which provides prevention and intervention services for at-risk juveniles.

67 Project Challenge Funds

\$150,000 R \$150,000 R

Provide funds for Project Challenge Inc., a nonprofit organization which provides alternative dispositions and services to juveniles in districts 24, 25, 29, and 30 who have been adjudicated delinquent or undisciplined. These funds will also allow for expansion to districts 5, 6A, 6B, and 23.

68 Pilot Juvenile Program

\$2,500,000 R

This funding allows OJJ to contract with a private-for-profit or non-profit firm to provide up to 100 secure and non-secure beds as part of a multi-functional juvenile facility. The beds, in the discretion of OJJ, can be a mix of detention and residential treatment such as substance abuse and sex offender treatment. The funding for FY 2000-01 assumes a January 1, 2001 operation date for the 100 beds.

69 Grant for Forsyth County Detention Center

Provides funding for grant-in-aid to Forsyth County Detention Center.

\$1,750,000 NR

Total Legislative Changes

\$3,807,500 R \$8,679,000 R

\$2,146,000 NR \$385,000 NR

Total Position Changes

-38.25 -38.25

Revised Budget

\$135,991,466 \$140,018,378

Correction

GENERAL FUND

	FY 99-2000		FY 2000-01	
Recommended Budget	\$22,020,076		\$21,431,794	
Legislative Changes				
70 Close GPAC Prison Facilities	(\$8,537,975)	R	(\$10,888,590)	R
The Governor recommended closing nine GPAC units. It is recommended that three of the nine units remain open -- Alamance, Cleveland, and Gates. Alamance is operating a work release pilot program that needs more time for assessment. Cleveland is a medium custody unit; its cost per day is comparable to the state average for medium custody units. The cost per day for Gates is lower than the average cost per day for minimum custody. Gates also provides a work crew for the community and operates a water and sewer system for the DOC, DOT, and two local schools.	-347 00		-347 00	
Six of the nine GPAC prison units originally recommended by the Governor are recommended for closing. These facilities either operate at costs well above the statewide average and/or are minimum custody institutions. Fewer minimum custody beds are needed due to the impact of Structured Sentencing. The closing dates and custody levels are:				
Goldsboro 8/1/99 (minimum)				
Blanch 9/1/99 (medium/close)				
Stokes 10/1/99 (minimum)				
Stanly 7/1/99 (minimum)				
Yadkin (9/1/99) (minimum)				
Iredell (10/1/99) (medium)				
71 Close Nash Prison Unit	(\$344,275)	R	(\$413,130)	R
It is recommended to close Nash 9/1/99 since minimum custody beds are not needed in this area of the state. This is the old Nash field unit which now operates, with 15 employees, as a satellite to the new Nash Unit.	-15 00		-15 00	
72 Convert Currituck Unit to Minimum Custody	(\$619,695)	R	(\$743,634)	R
Conversion of this prison from medium to minimum custody will reduce cost and allow for creation of minimum custody community work crews to serve the area.	-27.00		-27.00	

Correction

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73 Eliminate Double Ceiling

(\$3,045,348) R (\$3,999,260) R

In 1995, the General Assembly authorized double ceiling of inmates at Marion, Pasquotank and Central Prisons and funded the staffing necessary for additional security and programs. With increased availability of prison beds, it is possible to return to single cell close custody in these units and reduce the staffing accordingly.

-125 00

-125 00

74 Eliminate Expanded Operating Capacity Positions

(\$2,039,745) R (\$3,059,618) R

With the opening of new prison beds, the need for minimum security prison beds has diminished. This budget reduction would reduce beds and population at 16 minimum security units, allowing for reduction of staff.

-108 00

-108 00

75 Reduce Perimeter Security Positions

(\$247,880) R (\$330,506) R

Perimeter Patrol was reduced at medium custody prisons in 1998 from two patrols on the night shift to one. This recommendation would reduce staffing from two to one on the evening shift. There would continue to be two perimeter patrols on the day shift. Each of the prisons affected has an electronic intrusion fencing system.

-12 00

-12 00

76 Eliminate Adult Schools at Eastern and Harnett

(\$95,139) R (\$103,788) R

These two teacher positions are the last remaining adult basic education teachers in the male prisons. DOC's focus is now on youthful offenders; Community Colleges will provide these services for adult males at Harnett and Eastern.

-2 00

-2 00

77 Abolish Education Positions

(\$144,753) R (\$167,704) R

Eliminates four physical education teachers, three vocational teachers, and one Assistant Education Director at Western. The P.E. teachers are the last remaining P.E. teachers in DOC; their duties will be carried out by recreation staff and classroom teachers. The vocational programs at Piedmont will be carried out by Community Colleges, as are all other vocational programs in the prison system. DOC believes the Assistant Education Director duties can be handled by the Director.

-8 00

-8 00

78 Education Director Position at Eastern

(\$67,322) R (\$67,322) R

This item eliminates funding for the Education Director position which will be vacant July 1, 1999. The DOC adult education program at Eastern has been reduced over time and replaced by community college programs. The DOC adult program at Eastern no longer requires an on-site Education Director.

-1 00

-1 00

79 Abolish Parole / Post Release Hearing Officers

(\$291,540) R (\$291,540) R

Eliminate five parole revocation hearing officer positions due to the continued decrease in workload resulting from Structured Sentencing. The Department intends to use contractual employees to hold hearings around the state. Travel expenses are reduced to reflect this change.

-5.00 -5.00

80 Reduce Leased Space Funds

(\$343,220) R (\$343,220) R

Reduce funds for leased space by consolidating offices and implementing a pilot Home as Duty Station program within the Division of Community Corrections.

81 Consolidate Female IMPACT with Male IMPACT Program

(\$940,783) R (\$940,783) R

The female IMPACT Program has had difficulty maintaining a high utilization rate since its inception. The annual capacity of the program will be reduced from 260 to 120 and its operation will be consolidated with the program for males at Morganton, allowing a reduction in positions and funding.

-25.00 -25.00

82 Additional Reduction in IMPACT Female

(\$400,832) R (\$400,832) R

The IMPACT program for females in Hoffman is being consolidated with the program for men in Morganton, eliminating 25 positions. This left 12 positions budgeted for the female program in Hoffman. With this item, eight of those positions are eliminated due to the consolidation. This leaves 4 positions at Hoffman to continue food service operation for the program for men; a Food Service Manager I, two Correctional Food Service Supervisor I positions and a Maintenance Mechanic IV.

-8.00 -8.00

83 Reduce Parole Commissioners from 5 to 3

(\$161,766) R (\$176,472) R

Due to the declining number of paroles since the passage of Structured Sentencing, the number of Post Release Supervision and Parole Commissioners is reduced from 5 to 3. The terms of all current Commissioners will expire July 31, 1999 and 3 appointments will be made effective August 1, 1999.

-2.00 -2.00

84 Abolish Two Positions in Parole Commission

(\$92,033) R (\$92,033) R

Two positions from the Post Release Supervision and Parole Commission, a Victims Services Coordinator and a Public Information Officer, have been transferred to the Office of Citizen Services but were continued in the Parole Commission budget in 1998-99. This item eliminates funding for these positions because alternative funding will be provided by the Office of Citizen Services.

-2.00 -2.00

85 Additional Reductions in Parole Commission

(\$101,000) R (\$101,000) R

The Post-Release Supervision and Parole Commission budget is reduced by 5% to reflect decreasing workload. The positions eliminated are an Office Assistant V and an Office Assistant IV. This item also reduces operating expenses by \$60,944.

-2.00 -2.00

86 Eliminate Vacant Positions

(\$323,563) R (\$323,563) R

The Governor recommended elimination of 9 positions that had been vacant for one year or longer. One position was in the Division of Community Corrections and the rest were in the Division of Prisons.

-9.00 -9.00

87 Reduce Inmate Costs at Closed Facilities

(\$1,078,020) R (\$1,265,694) R

These funds are the inmate budget component (food, clothing, medical) for prisons recommended for closing. Also includes adjustment for moving up closing dates of Stanly and Yadkin Correctional Centers.

88 Close Stanly and Yadkin Units Early

(\$541,305) NR

It is recommended that the DOC close Stanly July 1, 1999 instead of the original proposed date of October 1, 1999 so that employees at Stanly can be used to staff the new Albemarle prison. The budget reduction is the additional amount generated between July 1, 1999 and October 1, 1999. It is also recommended that the Yadkin Unit close early -- September 1, 1999 rather than the original proposed date of November 1, 1999. This will avoid expenditures for major repairs or replacement of the water and sewer system.

89 Reduce Automobile Replacement Funds

(\$360,197) NR

The Subcommittee reduced the budget for automobile replacement by identifying vehicles that would not meet the replacement mileage cap (100,000 miles) until FY 2000-01.

90 Reduce Medical Contractual Personnel Funds

(\$475,000) R (\$475,000) R

The DOC continuation budget for medical contractual personnel for 1999-2000 and 2000-01 is \$8,500,000, roughly the same amount expended in 1997-98 and estimated in 98-99. However, the General Assembly funded new medical positions at NCCIW that were originally funded from the contractual budget. It is recommended that the contractual services funds be reduced by the amount that was replaced by a portion of the new positions.

91 Eliminate Funding for New Trainers

(\$415,575) R (\$498,650) R

The Governor's Continuation Budget recommends 10 new Correctional Training Instructors for the Division of Community Correction. This item eliminates funding for these positions.

(\$84,410) NR -10.00 -10.00

Correction

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92 Eliminate Funds for New Administrative Assistants

(\$472,588)

R

(\$567,060)

R

The Governor's Continuation Budget recommends 13 new Administrative Assistants in the Division of Community Corrections for the Managers in the largest Judicial Districts. This item eliminates these positions.

(\$105,820)

NR

-13.00

-13.00

93 Reduce Funds for New Probation / Parole Officers

(\$3,905,306)

R

(\$4,447,586)

R

The Governor's Continuation Budget recommends \$5.6 Million for 110 new Intermediate Officers (PPO II). Instead of establishing new positions, \$775,727 will be provided in 1999-2000 and \$935,112 in 1999-2000 to the Department of Correction to speed-up reallocation of 161 positions from PPO I (Community) to PPO II (Intermediate). These funds will allow a total of 10% raises for all 514 of the PPO II positions that have been created by reallocation. With these reallocations, caseload averages by 2000-01 will be: 28:2 for Intensive, 65:1 for Intermediate and 106:1 for Community. Reallocations will be phased in between September 1999 and January 2000

(\$921,690)

NR

-110.00

-110.00

94 Eliminate Funding for New Supervisors and Clerks

(\$796,913)

R

(\$956,219)

R

The Governor's Recommended Continuation Budget includes 11 new Chief PPO's and 11 Office Assistants, based on the addition of 110 Intermediate Officers. Because Intermediate Officers will be created through reclassifications of existing Officers, these positions are not needed.

(\$288,706)

NR

-22.00

-22.00

95 Remove Inflationary Increase for CJPP

(\$240,000)

R

(\$240,000)

R

The Governor's Recommended Continuation Budget includes a 2.5% increase in Implementation Grants for the counties participating in the Criminal Justice Partnership Program. This item removes funding for this inflationary increase.

96 Reduce Funds for Non- Participating Counties-CJPP

(\$705,704)

NR

The Governor's Continuation Budget includes an increase of \$4.5 Million to fully fund Implementation Grants for 100 counties for the Criminal Justice Partnership Program. Funding is eliminated for the 10 counties not expected to participate during 1999-2000.

97 One-Time Reduction in Prison Enterprises

(\$400,000)

NR

This one-time reduction will not affect committed Enterprise projects or planned equipment spending.

98 Reduce DART Cherry Aftercare Funds

The Continuation Budget includes \$319,715 in contractual service funds which are used for aftercare for offenders completing the 28 and 90 day programs at DART-Cherry who are not eligible for existing community programs. Funds for this project are reduced to \$269,715 for 1999-2000.

(\$50,000) NR

99 Inmate Road Squad Receipts

Increase receipts from Highway Fund for operating inmate road squads from \$6.5 million to \$7 million to reflect actual cost and to implement directive in 1998-99 Budget Bill to adjust the continuation budget to reflect actual cost of operating road squads. This transfer allows a reduction of \$500,000 in the General Fund.

(\$500,000) R (\$500,000) R

100 Alien Assistance Receipts

North Carolina receives federal funds to partially fund the cost of housing illegal aliens who are inmates in the prison system. Receipts are anticipated to increase, allowing for a reduction in the General Fund.

(\$1,100,000) NR

101 Inmate Co-Pay Receipts - Reduce General Fund

The General Assembly authorized inmate co-pay for visits to prison infirmaries in 1997. Inmates pay \$3.00 for routine visits to infirmary and \$5.00 for emergencies if they have funds available in their accounts. This reduction budgets the receipts and reduces the General Fund.

(\$300,000) R (\$300,000) R

102 Inmate Canteen Fund

This reduction is a one-time reduction in the estimated cash balance of the Inmate Welfare Fund. This reduction does not affect planned inmate projects or expenses to operate the Fund and inmate services.

(\$750,000) NR

103 Eliminate Vacant Medical Positions

The General Assembly authorized 50 new medical positions and 50 reallocations for a total of 100 new medical positions at Central and Women's Prison. This recommendation is to reduce 12 vacant positions at Central. These positions -- 8 lead nurses, 3 Nurse Supervisors and 1 staff nurse -- were established in June 1998 and have not been filled despite continuous reposting. 38 of 50 positions at Central will remain, including 25 nurses.

(\$540,000) R (\$540,000) R

-12.00

-12.00

104 Reduce Office Furniture Budget

Reduce funds in the Division of Community Correction's operating budget for office furniture.

(\$118,336) R (\$118,336) R

105 Modular Prison Unit

In 1998-99 the General Assembly appropriated \$350,000 to purchase a modular prison unit for the Henderson Correctional Center. Bids for the unit exceeded \$350,000. It is recommended that an additional \$60,000 be appropriated to complete this project.

\$60,000 NR

106 Continue Boot Camp Aftercare Program

Provide funds to continue the IMPACT aftercare program in Forsyth, Mecklenburg, New Hanover, Nash/Edgecombe and Buncombe Counties

\$440,000 R \$440,000 R

107 Women at Risk Program

Funding is increased from \$125,000 to \$200,000 to reflect growth in the program in Buncombe County and expansion to Burke, Caldwell and Catawba Counties.

\$75,000 R \$75,000 R

108 Harriet's House

Funds to provide additional support in 1999-2000 to the programs at Harriet's House, a transitional home for female ex-offenders and their children. Harriet's House receives \$200,000 in the Continuation Budget.

\$75,000 NR

109 Continue Victims Assistance Pilot and DOC Program

Continues pilot program to provide assistance to victims through the Division of Community Correction. The program, in Craven and Wake Counties, includes 1 Victims Assistant in each location and a clerical position in Craven. Also provides one-time funds to reprogram OPUS system for tracking victims information statewide for the DOC.

\$119,915 R \$119,915 R
\$75,000 NR
3.00 3.00

110 Equipment/Furniture Funds for Parole Commission

One-time funding to replace outdated equipment and furniture for the Post Release Supervision and Parole Commission.

\$50,000 NR

111 Inmate Road Squads at Avery/Mitchell

The continuation budget includes funds for 6 new road squads at Avery/Mitchell to serve those two counties and surrounding counties where prison units have closed. This item funds expansion of two more road squads effective October 1, 1999 for a total of 8.

\$133,767 R \$178,356 R
6.00 8.00

112 Funds for Inmate Education Programs

Funding to allow the DOC to contract with small community colleges to provide education and training for inmates. The DOC will consult with the Community College System to identify small colleges that otherwise could not afford to provide services.

\$50,000 R \$50,000 R

113 Additional Discretionary Funding for CJPP

Counties participating in the Criminal Justice Partnership Program can apply for discretionary grants, decided by the Secretary of DOC based on recommendations of the CJPP Board. These grants are funded from unspent CJPP funds from prior years and were very limited in 1998-99. This item increases the amount available for discretionary grants in 1999-2000.

\$225,000 NR

Total Legislative Changes

(\$25,819,925) R (\$31,488,269) R

(\$4,822,832) NR

Total Position Changes

-856 00 -856 00

Revised Budget

\$891,377,319 \$889,943,525



Section J: General Government

Будущее и настоящее (Л. С. Савицкий)

General Assembly

GENERAL FUND

	FY 99-2000	FY 2000-01
Recommended Budget	\$35,695,575	\$39,518,408
Legislative Changes		
1900 Reserves and Transfers		
1 Reduce Reserves and Transfers		
Reduce funding in reserve.	(\$715,000)	NR
Total Legislative Changes		
	(\$715,000)	NR
Total Position Changes		
Revised Budget	\$34,980,575	\$39,518,408

Governor

GENERAL FUND

	FY 99-2000		FY 2000-01
Recommended Budget	\$5,317,042		\$5,335,850
Legislative Changes			
1110 Administration			
2 Operating Budget Reductions	(\$53,678)	R	(\$53,678) R
Reduce operating budget as noted below:			
5327XX Travel	\$30,000		
533110 Supplies	\$8,678		
5345XX Equipment	\$10,000		
534710 Computer Software	\$5,000		
Total Legislative Changes	(\$53,678)	R	(\$53,678) R
Total Position Changes			
Revised Budget	\$5,263,364		\$5,282,172

State Budget and Management

GENERAL FUND

	FY 99-2000		FY 2000-01
Recommended Budget	\$7,247,118		\$7,348,782
Legislative Changes			
1022 1999 Special Appropriations			
3 NC Humanities Council Funds			
Provide funds to the North Carolina Humanities Council, a nonprofit corporation, for the programs of the Council.	\$100,000	NR	
4 Western Carolina Women's Coalition			
Provide funds to the Western Carolina Women's Coalition to support expansion of the regional network in the 25 westernmost counties among women and women's organizations aimed at fostering communication and collaboration and building capacity for economic self-sufficiency, leadership, and service and to support a major Women's Conference and Women's Equality Day Event.	\$25,000	NR	
5 Special Events Funds			
Provide funds to establish a reserve for the promotion of special events throughout the state.	\$500,000	NR	
6 Graveyard of the Atlantic			
Provide funds to match federal funds for the Graveyard of the Atlantic.	\$750,000	NR	
7 Regional Soccer Funds			
Provide matching funds for regional soccer facilities in Cumberland County.	\$1,000,000	NR	
8 Community Learning Center Grant-in-Aid			
Provide funds to Wake County to expand the Community Learning Center services in Wake County and the region.	\$200,000	NR	
1310 Office of State Budget			
9 Reduce Operating Expenses	(\$41,000)	R	(\$41,000) R
Reduce funding for			
532850-Printing, Binding & Duplicating	\$15,000		
532821-Computer/Data Proc. Services	\$23,000		
533110-Supplies	\$3,000		

10 Advisory Budget Commission	\$20,000	R	\$20,000	R
Provide additional funding for the Advisory Budget Commission's annual statewide tours.				

Total Legislative Changes	(\$21,000)	R	(\$21,000)	R
	\$2,575,000	NR		

Total Position Changes

Revised Budget	\$9,801,118		\$7,327,782	
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Secretary of State

GENERAL FUND

	FY 99-2000		FY 2000-01	
Recommended Budget	\$6,284,106		\$6,196,606	
Legislative Changes				
1110 General Administration				
11 Electronic Commerce Specialist Position	\$79,964	R	\$79,964	R
Providing funding for an Applications Analyst/Programmer Specialist position. This position will serve as the Department's Electronic Commerce Specialist responsible for regulating electronic signatures and certification authorities as provided for in the Electronic Commerce Act.	\$6,700	NR		
	1 00		1 00	
12 Operating Budget Reductions	(\$21,199)	R	(\$21,199)	R
Reduce operating budgets for				
532199 - Misc. Contractual Services	\$1,841			
532942 - Employee Educational Expense	\$15,625			
531311 - Temporary Wages	\$3,733			
1120 Publications Division				
13 Directory of Women in the NC General Assembly				
Provide funds to update and reprint the directory of women in the NC General Assembly in partnership with the Western Carolina Women's Coalition and the NC Council for Women.	\$10,000	NR		
14 Operating Budget Reductions	(\$9,193)	R	(\$9,193)	R
Reduce operating budgets for				
532199 - Misc. Contractual Services	\$2,000			
532942 - Employee Educational Expense	\$4,125			
531311 - Temporary Wages	\$3,068			
1210 Corporations Division				
15 Electronic Commerce Demonstration Project				
Provide funding to implement an Electronic Commerce Demonstration Project. This purpose of this Project is to allow the ordering, production, and delivery of Certificates of Existence by electronic media including the Internet and the World Wide Web.	\$98,000	NR		
16 Operating Budget Reductions	(\$14,125)	R	(\$14,125)	R
Reduce operating budgets for				
532199 - Misc. Contractual Services	\$10,000			
532942 - Employee Educational Expense	\$4,125			

Secretary of State

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1220 Uniform Commercial Code Division

17 Operating Budget Reductions

(\$33,125) R (\$33,125) R

Reduce operating budgets for

532199 - Misc. Contractual Services \$30,000

532942 - Employee Educational Expense \$3,125

1230 Securities Registration Division

18 Operating Budget Reduction

(\$8,125) R (\$8,125) R

Reduce operating budgets for

532199 - Misc. Contractual Services \$5,000

532942 - Employee Educational Expense \$3,125

19 Securities Registration Division Staff Expansion

\$130,045 R \$130,045 R

Provide funding for a Registration Analyst position and 2

Investment Advisor Field Auditor positions to examine

securities registration applications and to audit investment

advisor firms. These positions are needed to help meet the

increase in the number of public offerings in the State.

\$29,985 NR

3.00

3.00

1240 Business License Division

20 Operating Budget Reductions

(\$3,125) R (\$3,125) R

Reduce operating budget for employee educational expense
(532942)

21 Rent/Lease Office Buildings

(\$29,540) R (\$29,540) R

Reduce the budget for rental and lease of office buildings.

The Secretary of State offices will relocate to the old Dept.

of Revenue Building during the 1999-2000 fiscal year.

1300 Notary Public Commission

22 Operating Budget Reductions

(\$4,125) R (\$4,125) R

Reduce operating budgets for

532199 - Misc. Contractual Services \$1,000

532942 - Employee Educational Expense \$3,125

1400 Land Records Management

23 Operating Budget Reductions

(\$3,125) R (\$3,125) R

Reduce operating budget for employee educational expense
(532942)

1910 Reserves and Transfers

24 Corporation Division Changes	\$175,000	R	\$175,000	R
Provide start-up costs for the Corporations Division for personnel and computer costs associated with changes implemented with SB 297 and SB 835.				
<hr/>				
Total Legislative Changes	\$259,327	R	\$259,327	R
	\$144,685	NR		
Total Position Changes	4.00		4.00	
Revised Budget	\$6,688,118		\$6,455,933	
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Auditor

GENERAL FUND

	FY 99-2000		FY 2000-01	
Recommended Budget	\$11,656,492		\$11,656,492	
Legislative Changes				
1120 Support Services				
25 Reduce Operating Expenses	(\$4,500)	R	(\$4,500)	R
Reduce the operating expenses to correspond to the reduction in field audit staff.				
532942 Other Employee Education Expense	\$1,500			
5328XX Communication	\$1,800			
533110 General Office Supplies	\$1,200			
1210 Field Audit Division				
26 Information System Auditor	\$68,114	R	\$68,114	R
Providing funding for an additional Information System Auditor position to enable the Office to increase the audits of the growing number of computer applications and installations in State government.				
	\$6,590	NR		
	1 00		1 00	
27 Reduce Personnel	(\$112,065)	R	(\$112,065)	R
Eliminate 2 Assistant State Auditor II positions and related operating cost as noted:				
531XXX Salary and Benefits	\$103,465			
5327XX Travel	\$8,000			
53XXXX General Expense	\$600			
	-2.00		-2.00	
Total Legislative Changes				
	(\$48,451)	R	(\$48,451)	R
	\$8,590	NR		
Total Position Changes	-1.00		-1.00	
Revised Budget	\$11,614,631		\$11,608,041	

Auditor

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Treasurer

GENERAL FUND

	FY 99-2000	FY 2000-01
Recommended Budget	\$19,515,232	\$19,515,232

Legislative Changes

1150 Information Services

28 Information System Mainframe

Provide funding for the annual payment on the lease-purchase agreement for the Department's mainframe and storage system. The General Assembly's Select Committee on Information Technology will assess and report on the information technology needs for the Department prior to the start of the 2000 Session of the General Assembly. Non-tax revenue will be increased by an offsetting amount.

\$268,000	NR
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1150 Information Systems Division

29 Information System Personnel

\$157,561	R	\$195,033	R
\$22,600	NR	\$0	NR
5.00		5.00	

Provide funding for 1 Database Administrator II, 2 Applications Analyst Programmer IIs, 1 Computer Consultant IV, and 1 Computer Network Coordinator. These positions will help maintain the Department's growing technological infrastructure. The total cost is \$348,585 recurring and \$50,000 nonrecurring for 1999-2000 with positions effective October 1, 1999. The annualized recurring cost of positions is \$431,488 for 2000-2001. The cost of these positions will be allocated among the divisions within the State Treasurer's Office as noted below.

	99-2000	2000-01
Receipt Supported Divisions		
1130- Escheats	\$33,813R \$4,850NR	\$41,855R
1210- Retirement	\$157,211R \$22,500NR	\$194,600R
Total Receipts	\$191,024R \$27,350NR	\$236,455R

General Fund Supported Divisions			
1210- Inv. Mgmt	\$63,791R	\$9,150NR	\$78,962R
1220- Banking	\$23,704R	\$3,400NR	\$29,341R
1310- Local Govt	\$70,066R	\$10,050NR	\$86,730R
Total Gen. Fund	\$157,561R	\$22,600NR	\$195,033R
Non-tax revenue will be increased by the amount of the cost allocated to the general fund divisions.			

1210 Investment Management

30 Investment Management Funds

(\$1,085,128)	R	(\$1,085,128)	R
---------------	---	---------------	---

Reduce the amount budgeted for financial investment administrative services (532120) to more accurately reflect actual requirements for custodial services. Non-tax revenue will be reduced by an offsetting amount.

1310 Local Government Operations

31 Local Government Operations Staff Expansion

\$211,359	R	\$237,896	R
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Provide funding for 1 Local Government Financial Consultant III position and 1 Local Government Financial Consultant II position to help meet the growing demands of the Division. The funding includes salaries and benefits and the related operating cost. The positions are effective October 1, 1999. Non-tax revenue will be increased by an offsetting amount.

\$16,000	NR		
2 00		2.00	

1410 Retirement Operations Division

32 Retirement Operations

\$0	R	\$0	R
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Provide recurring funding of \$979,170 and nonrecurring funds of \$140,00 for 1999-2000 for 20 positions effective October 1, 1999. The annualized cost of the 20 positions for 2000-2001 is \$1,126,393. The positions are needed to meet the level of demand from members of the state's retirement system. The 20 positions include 7 Retirement Benefits Counselors, 4 Processing Assistant Vs, 2 Accounting Clerks, and 7 Processing Assistant IVs. Retirement Operations is a receipt supported function of the Department.

\$0	NR	\$0	NR
20 00		20 00	

Total Legislative Changes

(\$716,208)	R	(\$652,199)	R
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\$306,600	NR	\$0	NR
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Total Position Changes

27.00		27.00	
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Revised Budget

\$19,105,624		\$18,863,033	
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Insurance

GENERAL FUND

	FY 99-2000		FY 2000-01	
Recommended Budget	\$25,973,947		\$25,984,721	
Legislative Changes				
1200 Company Services				
33 Information Service Needs	\$202,056	R	\$202,056	R
Provide funds to replace outdated computer equipment. Also provide funds to establish 2 Computer Systems Analyst III positions and 1 Computer Support Technician II position for the Information Services Division. The Division supports the other divisions within the Department that audit, regulate and control insurance operations in the state. The general fund will be reimbursed from the insurance regulatory fund for the total cost.	\$420,500	NR	\$0	NR
	3.00		3.00	
1300 Technical Services Group				
34 Senior Health Insurance Information Program	\$104,000	R	\$104,000	R
Appropriate funds to allow the Program to expand education and counseling services to North Carolina Medicare beneficiaries regarding Medicare+Choice.				
1500 Safety Services Group				
35 Building Code Book Sales	(\$191,740)	R	(\$191,740)	R
Reduce the expenditure (53-2850) for producing the Building Code to reflect actual needs. The Department overestimated the demand for the books.				
Total Legislative Changes				
	\$114,316	R	\$114,316	R
	\$420,500	NR	\$0	NR
Total Position Changes	3.00		3.00	
Revised Budget	\$26,508,763		\$26,099,037	

62 Communities in Schools

\$450,000

R

\$450,000

R

Communities in Schools is a non-profit organization that develops community "stay in school efforts" for at-risk children and court involved juveniles. The CIS program currently operates in 28 counties. The Governor recommended an expansion budget of \$700,000. The recommended budget allows for continuation of programs funded in 1998-99 and modest expansion.

63 Center for Prevention of School Violence

\$500,000

R

\$500,000

R

This program, which operates within the UNC university system, provides research and technical assistance to schools and communities in preventing violence in the schools. The recommended funding is the same amount recommended by the Governor. Funds will be passed through from OJJ to the UNC system.

6.00

6.00

64 Juvenile Justice Institute

\$575,000

R

\$575,000

R

Provide funds to establish a Juvenile Justice Institute at North Carolina Central University. The Institute will serve as resource for research and information on national and state juvenile justice practices; provide technical assistance to small non-profit community groups; and survey public and private groups on juvenile justice program effectiveness. Of these funds, \$75,000 shall go the Clinical Program at the North Carolina Central University School of Law to assist expansion of their work into family court, domestic violence cases, and alternative dispute resolution.

1.00

1.00

65 Teen Court Funds

\$105,000

R

\$105,000

R

Provide funds to continue programs in Wake (\$25k), Guilford (\$20k), Duplin (\$20k), Durham (\$20k) and Onslow (\$20k) Counties. Teen courts provide a peer review of juveniles who have committed non-violent misdemeanors and recommend different types of punishment, including community service and restitution.

66 Juvenile Assessment Center

\$150,000

R

\$150,000

R

Provide funds for the juvenile assessment center in District 12 which provides prevention and intervention services for at-risk juveniles.

67 Project Challenge Funds

\$150,000

R

\$150,000

R

Provide funds for Project Challenge Inc., a nonprofit organization which provides alternative dispositions and services to juveniles in districts 24, 25, 29, and 30 who have been adjudicated delinquent or undisciplined. These funds will also allow for expansion to districts 5, 6A, 6B, and 23.

68 Pilot Juvenile Program

This funding allows OJJ to contract with a private-for-profit or non-profit firm to provide up to 100 secure and non-secure beds as part of a multi-functional juvenile facility. The beds, in the discretion of OJJ, can be a mix of detention and residential treatment such as substance abuse and sex offender treatment. The funding for FY 2000-01 assumes a January 1, 2001 operation date for the 100 beds.

\$2,500,000

R

69 Grant for Forsyth County Detention Center

Provides funding for grant-in-aid to Forsyth County Detention Center.

\$1,750,000

NR

Total Legislative Changes	\$3,807,500	R	\$8,679,000	R
	\$2,146,000	NR	\$385,000	NR
Total Position Changes	-38.25		-38.25	
Revised Budget	\$135,991,466		\$140,018,378	

Correction

GENERAL FUND

	FY 99-2000	FY 2000-01
Recommended Budget	\$922,020,076	\$921,431,794

Legislative Changes

70 Close GPAC Prison Facilities (\$8,537,975) R (\$10,888,590) R

The Governor recommended closing nine GPAC units. It is recommended that three of the nine units remain open -- Alamance, Cleveland, and Gates. Alamance is operating a work release pilot program that needs more time for assessment. Cleveland is a medium custody unit; its cost per day is comparable to the state average for medium custody units. The cost per day for Gates is lower than the average cost per day for minimum custody. Gates also provides a work crew for the community and operates a water and sewer system for the DOC, DOT, and two local schools.

-347.00

-347.00

Six of the nine GPAC prison units originally recommended by the Governor are recommended for closing. These facilities either operate at costs well above the statewide average and/or are minimum custody institutions. Fewer minimum custody beds are needed due to the impact of Structured Sentencing. The closing dates and custody levels are:

Goldsboro 8/1/99 (minimum)
 Blanch 9/1/99 (medium/close)
 Stokes 10/1/99 (minimum)
 Stanly 7/1/99 (minimum)
 Yadkin (9/1/99) (minimum)
 Iredell(10/1/99) (medium)

71 Close Nash Prison Unit (\$344,275) R (\$413,130) R

It is recommended to close Nash 9/1/99 since minimum custody beds are not needed in this area of the state. This is the old Nash field unit which now operates, with 15 employees, as a satellite to the new Nash Unit.

-15.00

-15.00

72 Convert Currituck Unit to Minimum Custody (\$619,695) R (\$743,634) R

Conversion of this prison from medium to minimum custody will reduce cost and allow for creation of minimum custody community work crews to serve the area.

-27.00

-27.00

Correction

73 Eliminate Double Celling	(\$3,045,348)	R	(\$3,999,260)	R
In 1995, the General Assembly authorized double celling of inmates at Marion, Pasquotank and Central Prisons and funded the staffing necessary for additional security and programs. With increased availability of prison beds, it is possible to return to single cell close custody in these units and reduce the staffing accordingly.	-125 00		-125 00	
74 Eliminate Expanded Operating Capacity Positions	(\$2,039,745)	R	(\$3,059,618)	R
With the opening of new prison beds, the need for minimum security prison beds has diminished. This budget reduction would reduce beds and population at 16 minimum security units, allowing for reduction of staff.	-108 00		-108 00	
75 Reduce Perimeter Security Positions	(\$247,880)	R	(\$330,506)	R
Perimeter Patrol was reduced at medium custody prisons in 1998 from two patrols on the night shift to one. This recommendation would reduce staffing from two to one on the evening shift. There would continue to be two perimeter patrols on the day shift. Each of the prisons affected has an electronic intrusion fencing system.	-12.00		-12.00	
76 Eliminate Adult Schools at Eastern and Harnett	(\$95,139)	R	(\$103,788)	R
These two teacher positions are the last remaining adult basic education teachers in the male prisons. DOC's focus is now on youthful offenders; Community Colleges will provide these services for adult males at Harnett and Eastern.	-2.00		-2.00	
77 Abolish Education Positions	(\$144,753)	R	(\$167,704)	R
Eliminates four physical education teachers, three vocational teachers, and one Assistant Education Director at Western. The P.E. teachers are the last remaining P.E. teachers in DOC; their duties will be carried out by recreation staff and classroom teachers. The vocational programs at Piedmont will be carried out by Community Colleges, as are all other vocational programs in the prison system. DOC believes the Assistant Education Director duties can be handled by the Director.	-8.00		-8.00	
78 Education Director Position at Eastern	(\$67,322)	R	(\$67,322)	R
This item eliminates funding for the Education Director position which will be vacant July 1, 1999. The DOC adult education program at Eastern has been reduced over time and replaced by community college programs. The DOC adult program at Eastern no longer requires an on-site Education Director.	-1.00		-1.00	

79 Abolish Parole / Post Release Hearing Officers

(\$291,540)

R

(\$291,540)

R

Eliminate five parole revocation hearing officer positions due to the continued decrease in workload resulting from Structured Sentencing. The Department intends to use contractual employees to hold hearings around the state. Travel expenses are reduced to reflect this change.

-5 00

-5 00

80 Reduce Leased Space Funds

(\$343,220)

R

(\$343,220)

R

Reduce funds for leased space by consolidating offices and implementing a pilot Home as Duty Station program within the Division of Community Corrections.

81 Consolidate Female IMPACT with Male IMPACT Program

(\$940,783)

R

(\$940,783)

R

The female IMPACT Program has had difficulty maintaining a high utilization rate since its inception. The annual capacity of the program will be reduced from 260 to 120 and its operation will be consolidated with the program for males at Morganton, allowing a reduction in positions and funding.

-25 00

-25 00

82 Additional Reduction in IMPACT Female

(\$400,832)

R

(\$400,832)

R

The IMPACT program for females in Hoffman is being consolidated with the program for men in Morganton, eliminating 25 positions. This left 12 positions budgeted for the female program in Hoffman. With this item, eight of those positions are eliminated due to the consolidation. This leaves 4 positions at Hoffman to continue food service operation for the program for men; a Food Service Manager I, two Correctional Food Service Supervisor I positions and a Maintenance Mechanic IV.

-8 00

-8 00

83 Reduce Parole Commissioners from 5 to 3

(\$161,766)

R

(\$176,472)

R

Due to the declining number of paroles since the passage of Structured Sentencing, the number of Post Release Supervision and Parole Commissioners is reduced from 5 to 3. The terms of all current Commissioners will expire July 31, 1999 and 3 appointments will be made effective August 1, 1999.

-2 00

-2 00

84 Abolish Two Positions in Parole Commission

(\$92,033)

R

(\$92,033)

R

Two positions from the Post Release Supervision and Parole Commission, a Victims Services Coordinator and a Public Information Officer, have been transferred to the Office of Citizen Services but were continued in the Parole Commission budget in 1998-99. This item eliminates funding for these positions because alternative funding will be provided by the Office of Citizen Services.

-2 00

-2 00

85 Additional Reductions in Parole Commission	(\$101,000)	R	(\$101,000)	R
The Post-Release Supervision and Parole Commission budget is reduced by 5% to reflect decreasing workload. The positions eliminated are an Office Assistant V and an Office Assistant IV. This item also reduces operating expenses by \$60,944.	-2 00		-2 00	
86 Eliminate Vacant Positions	(\$323,563)	R	(\$323,563)	R
The Governor recommended elimination of 9 positions that had been vacant for one year or longer. One position was in the Division of Community Corrections and the rest were in the Division of Prisons.	-9 00		-9 00	
87 Reduce Inmate Costs at Closed Facilities	(\$1,078,020)	R	(\$1,265,694)	R
These funds are the inmate budget component (food, clothing, medical) for prisons recommended for closing. Also includes adjustment for moving up closing dates of Stanly and Yadkin Correctional Centers.				
88 Close Stanly and Yadkin Units Early	(\$541,305)	NR		
It is recommended that the DOC close Stanly July 1, 1999 instead of the original proposed date of October 1, 1999 so that employees at Stanly can be used to staff the new Albemarle prison. The budget reduction is the additional amount generated between July 1, 1999 and October 1, 1999. It is also recommended that the Yadkin Unit close early -- September 1, 1999 rather than the original proposed date of November 1, 1999. This will avoid expenditures for major repairs or replacement of the water and sewer system.				
89 Reduce Automobile Replacement Funds	(\$360,197)	NR		
The Subcommittee reduced the budget for automobile replacement by identifying vehicles that would not meet the replacement mileage cap (100,000 miles) until FY 2000-01.				
90 Reduce Medical Contractual Personnel Funds	(\$475,000)	R	(\$475,000)	R
The DOC continuation budget for medical contractual personnel for 1999-2000 and 2000-01 is \$8,500,000, roughly the same amount expended in 1997-98 and estimated in 98-99. However, the General Assembly funded new medical positions at NCCIW that were originally funded from the contractual budget. It is recommended that the contractual services funds be reduced by the amount that was replaced by a portion of the new positions.				
91 Eliminate Funding for New Trainers	(\$415,575)	R	(\$498,650)	R
The Governor's Continuation Budget recommends 10 new Correctional Training Instructors for the Division of Community Correction. This item eliminates funding for these positions.	(\$84,410) -10.00	NR	-10.00	

92 Eliminate Funds for New Administrative Assistants

(\$472,588) R (\$567,060) R

The Governor's Continuation Budget recommends 13 new Administrative Assistants in the Division of Community Corrections for the Managers in the largest Judicial Districts. This item eliminates these positions.

(\$105,820) NR
-13 00 -13 00

93 Reduce Funds for New Probation / Parole Officers

(\$3,905,306) R (\$4,447,586) R

The Governor's Continuation Budget recommends \$5.6 Million for 110 new Intermediate Officers (PPO II). Instead of establishing new positions, \$775,727 will be provided in 1999-2000 and \$935,112 in 1999-2000 to the Department of Correction to speed-up reallocation of 161 positions from PPO I (Community) to PPO II (Intermediate). These funds will allow a total of 10% raises for all 514 of the PPO II positions that have been created by reallocation. With these reallocations, caseload averages by 2000-01 will be: 28:2 for Intensive, 65:1 for Intermediate and 106:1 for Community. Reallocations will be phased in between September 1999 and January 2000.

(\$921,690) NR
-110 00 -110 00

94 Eliminate Funding for New Supervisors and Clerks

(\$796,913) R (\$956,219) R

The Governor's Recommended Continuation Budget includes 11 new Chief PPO's and 11 Office Assistants, based on the addition of 110 Intermediate Officers. Because Intermediate Officers will be created through reclassifications of existing Officers, these positions are not needed.

(\$288,706) NR
-22 00 -22 00

95 Remove Inflationary Increase for CJPP

(\$240,000) R (\$240,000) R

The Governor's Recommended Continuation Budget includes a 2.5% increase in Implementation Grants for the counties participating in the Criminal Justice Partnership Program. This item removes funding for this inflationary increase.

96 Reduce Funds for Non- Participating Counties-CJPP

(\$705,704) NR

The Governor's Continuation Budget includes an increase of \$4.5 Million to fully fund Implementation Grants for 100 counties for the Criminal Justice Partnership Program. Funding is eliminated for the 10 counties not expected to participate during 1999-2000.

97 One-Time Reduction in Prison Enterprises

(\$400,000) NR

This one-time reduction will not affect committed Enterprise projects or planned equipment spending.

Cultural Resources

GENERAL FUND

	FY 99-2000		FY 2000-01	
Recommended Budget	\$58,943,774		\$59,838,161	
Legislative Changes				
1110 Secretary's Office				
58 Grants to Local Organizations				
Appropriate funds for local arts, cultural, and historical organizations, and local museums as grants-in-aid	\$8,000,000	NR		
1120 Administrative Services				
59 Increase Operating Funds				
Appropriate funds to replace computers.	\$100,000	NR		
1210 Archives & History - Administration				
60 Travel				
Reduce funding in line item 532714.	(\$10,000)	R	(\$10,000)	R
1230 Archives and Records				
61 Travel				
Reduce funding in line item 532714.	(\$10,000)	R	(\$10,000)	R
1241 State Historic Sites				
62 Reduce Line Item Expenditures				
Reduce the following line items:	(\$162,825)	R	(\$162,825)	R
532714 Trans - Ground-In-State	\$30,000			
534610 Art & Artifacts	\$132,825			
63 Old Salem Funds				
Provide funds for the restoration and reconstruction of historic St. Phillips Church and the construction of the North Carolina Heritage Education Center at Old Salem.	\$1,000,000	NR		

1320 Museum of Art

64 Personal Services

(\$66,412)

R

(\$66,412)

R

Reduce funds for miscellaneous contractual services - 532199

1330 NC Arts Council

65 Travel

(\$5,000)

R

(\$5,000)

R

Reduce funds in line item 532714

66 Basic Grants Program

Funding provides a one-time increase in the continuation budget for grants to local arts organizations:

\$1,200,000

NR

Primary Arts Organizations	\$600,000
Rural Arts Leadership	\$400,000
Cultural Tourism	\$200,000

67 Grassroots Arts Program

Provides one-time increase in the continuation budget for grants awarded to local arts councils.

\$800,000

NR

68 Shakespeare Festival Funds

\$260,000

R

\$260,000

R

Provide funds for the Educational Outreach Touring Program.

69 The Lost Colony

\$260,000

R

\$260,000

R

Appropriate funds to the Roanoke Island Historical Association to support operations of the the Lost Colony outdoor drama production.

1360 Grants-in-Aid to Arts

70 NC Symphony Grant-Memorial Auditorium

Provide balance of State funding as grant-in-aid to NC Symphony Society for acoustical enhancements.

\$1,500,000

NR

1410 State Library

71 Travel

(\$2,000)

R

(\$2,000)

R

Reduce funds in line item 532714.

Cultural Resources

1500 Museum of History

72 Adjust Various Line Items

(\$93,303)R(\$93,303)R

Reduce funds in the following line items:

531311 Temp Salaries	\$40,000
531511 Social security	\$3,060
532714Tran - Ground-In-State	\$5,917
533990 Other Supplies and Materials	\$22,326
534610 Art and Artifacts	\$22,000

Total Legislative Changes	\$170,460	R	\$170,460	R
	\$12,600,000	NR		
Total Position Changes				
Revised Budget	\$71,714,234		\$60,008,621	

State Board of Elections

GENERAL FUND

	FY 99-2000		FY 2000-01	
Recommended Budget	\$3,159,660		\$3,159,660	
Legislative Changes				
1100 Administration				
73 Voter Registration Forms	\$40,000	R	\$40,000	R
Providing funding for the annual distribution of voter registration forms to all institutions of higher learning for every enrolled student. The Higher Education Act passed by Congress in 1998 requires higher education institutions to offer voter registration to each enrolled student.				
Total Legislative Changes	\$40,000	R	\$40,000	R
Total Position Changes				
Revised Budget	\$3,199,660		\$3,199,660	

Office of Administrative Hearings

GENERAL FUND

	FY 99-2000		FY 2000-01	
Recommended Budget	\$2,687,664		\$2,721,970	
Legislative Changes				
1100 Administration and Operations				
74 Reduce Civil Rights Caseload	\$64,485	R	\$64,485	R
Appropriate funding for a Senior Civil Rights Investigator to reduce caseload backlog, improve timeliness of investigations, and provide expertise in investigating political discrimination cases.	\$5,050	NR		
	1.00		1.00	
Total Legislative Changes	\$64,485	R	\$64,485	R
	\$5,050	NR		
Total Position Changes	1.00		1.00	
Revised Budget	\$2,757,199		\$2,786,455	



Section K: Transportation

Section II: Introduction

Transportation

HIGHWAY FUND

	FY 99-2000	FY 2000-01
Recommended Budget	\$1,137,920,833	\$1,145,178,150

Legislative Changes

Operations

(2420) Operations

1 Eliminate Vacant Engineer Trainee Positions	(\$300,238)	R	(\$300,238)	R
Eliminates vacant engineer trainee positions				
	-7.00		-7.00	

Construction and Maintenance

(0350) Airport Program

2 Additional Funding for Airports			\$0	NR
	1999-2000	2000-2001		
State Aid	\$700,000	0		
General Fund	\$700,000	0		
Appropriation				

(0660) Ferry Division

3 Reduce Ferry Operating Funds				
Nonrecurring reduction from various line items throughout the Ferry Division budget.	(\$1,000,000)	NR	(\$1,000,000)	NR

(5240) Maintenance - Contract Resurfacing

4 Increase Funding for Contract Resurfacing				
Provides additional funding for contract resurfacing	\$8,000,000	NR	\$7,000,000	NR

(5940) Rail Program

5 Expand and Allocate Rail Funds

	1999-00	2000-01			
6006 State Aid	(12,100,000)	(12,100,000)	\$8,734,405	NR	\$9,407,088 NR
6401 Piedmont, Carolinian					
Operating	2,875,000	2,875,000			
6402 Industrial Access	1,000,000	1,000,000			
6403 Sealed Corridor	1,500,000	1,750,000			
6404 Envir Studies	2,025,000	1,750,000			
6405 Station					
Improvements	1,000,000				
6406 Western NC Service		3,525,000			
6407 Improve Travel Time					
Raleigh-Charlotte	12,434,405	10,607,088			

(5970) Public Transportation

6 Funds for Public Transportation

	\$78,007	R	\$78,007	R
Provides additional appropriations to fund public transportation.	\$18,821,993	NR	\$15,621,993	NR

Division of Motor Vehicles

(0520) Vehicle Registration

7 Reduce Budget for Branch Agent Fees

Reduces budget for Branch Agent Fees for 1999-00 consistent with current trends in Branch Agent transaction volumes.	(\$500,000)	NR
--	-------------	----

8 Reduce Budget for License Plates and Stickers

Reduces budget for license plates and stickers for 1999-00 consistent with current projections	(\$500,000)	NR
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(0530) Driver Licensing

9 Reduce Budget for Driver License Photos

Reduces budget for driver license photos for 1999-00 consistent with current projections.	(\$800,000)	NR
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Reserves

(6220) DEHNR - LUST Fund

10 Technical Adjustment

	(\$253,007)	R	(\$253,007)	R
Appropriations are reduced to reflect a corresponding increase in the appropriation to Revenue for tax collection. By statute, revenues appropriated to the LUST Fund are net of costs of administering collection of the motor fuel inspection tax.				

Transportation

(6230) Dept. of Revenue - Tax Collection

11 Reserve for Revenue Tax Collection

\$253,007

R

\$253,007

R

Provides funds to pay for increased data processing expenses related to the collection of motor fuel taxes.

(6330) Global Transpark

12 Increase Global Transpark Funding

\$250,000

R

\$250,000

R

Increases funding for three new administrative positions (a chief financial officer, an administrator and a secretary) and miscellaneous expenses.

(6370) Transfer to Highway Trust Fund

13 Discontinue Transfer to Highway Trust Fund

(\$38,000,000) NR

(\$38,000,000) NR

Discontinues, for biennium, transfer to Highway Trust Fund of money required by statute. These funds were originally made available from the retirement of Highway Fund bonds. As these bonds were paid off, money equal to the debt service on the bonds was paid to the Highway Trust Fund.

(6610) Retirement Rate Reduction

14 Contributions-Retiree Health Plan Premium Reserve

(\$7,000,000) NR

Suspends surcharge on employer retirement contributions for retiree health benefit premiums for 1999-2000 only; 1999-2000 retiree health benefit premiums funded out of \$270 million balance in State's Reserve for Retiree Health Benefits.

(6801) Legislative Salary Increase

15 Compensation Bonus

\$2,000,000 NR

Provides one-time \$125 per full-time employee compensation bonus to employees funded by the Highway Fund.

16 Legislative Salary Increase

\$12,000,000

R

\$12,000,000

R

Provides funding for a 3% compensation increase for all employees funded from the Highway Fund.

(6826) Trust Fund Support

17 Increase Trust Fund Administration Support

(\$8,000,000)

R

(\$8,000,000)

R

Increases administrative charges to the Highway Trust Fund, thereby decreasing Highway Fund requirements.

(6827) State Health Plan

18 Increased State Employee Health Plan Costs

\$5,000,000

R

\$7,000,000

R

Increases the appropriation to the teachers' and state employees' Comprehensive Major Medical Plan for each year of the biennium.

Transportation

Page K 3

(6828) Reserve for Maintenance

19 Increase Maintenance Expenditures

Increases Maintenance Expenditures.

\$30,010,000 NR \$31,000,000 NR

(6829) Deferred Equipment Purchases

20 Defer Equipment Purchases

Defers equipment purchases for 1999-00.

(\$6,000,000) NR

(6830) Administrative Budgets

21 Delay Filling of Vacancies

To reduce the Highway Fund appropriation, the Department will keep vacant positions empty for two additional months.

(\$7,200,000) NR

(6831) Increase in Health Plan Contributions

22 Prescription Drug Card Program for State Employees

Implements a prescription drug card program, effective January, 2000, in the State Employee Health Benefit Plan's self-insured indemnity program by replacing deductible and 20% coinsurance assessed members of the program for outpatient prescription drugs with prescription copayments paid by members to pharmacies at the time of purchase. Increased employer premiums also paid to HMO's.

\$1,000,000 R \$1,000,000 R

(6832) Visitor Centers

23 Additional Funding for Visitor Centers

Provides \$25,000 for each of seven visitor centers to supplement the \$75,000 they receive from the Special Registration Plate Account.

\$175,000 R \$175,000 R

Total Legislative Changes

\$10,202,769 R \$12,202,769 R

\$6,566,398 NR \$24,029,081 NR

Total Position Changes

-7 00 -7.00

Revised Budget

\$1,154,690,000 \$1,181,410,000

Section L: Reserves

Section L. Rostov

Statewide Reserves

GENERAL FUND

FY 99-2000

FY 2000-01

1 State Funded Compensation Increases	\$397,600,000	R	\$397,600,000	R
Provides recurring funding to increase salaries of Public School, Community College and State Employees. The percentage amount of salary increase by group is listed below:	\$0	NR		
Public Schools				
Teacher Salary Schedule - 7.5% Average				
School-Based Administrator Salary Schedule (Principals & Assistant Principals) - 8%				
All Other Public School Employees - 3%				
Community College Employees - 3% Average				
State Employees				
SPA (State Agency/UNC System)				
2% Career Growth Award				
1% Cost-of-Living Adjustment				
EPA (State Agency) - 3%				
EPA (UNC System) - 3% Average				
State Agency Teachers - 7.5% Average				
School of Science & Math Faculty - 7.5% Average				
2 State Funded Compensation Bonus	\$0	R		
Provides non recurring appropriation for a one-time \$125.00 per full-time employee compensation bonus to selected Public School, Community College, and State Employees.	\$16,400,000	NR		
3 SPA Minimum Salary/Federal Poverty Guideline	\$100,000	R	\$100,000	R
Raise the minimum salary of permanent full-time State employees subject to the State Personnel Act to the income level for a family of four under the federal poverty guidelines (currently \$16,700).	\$0	NR		

4 Increased State Employee Health Plan Costs	\$100,000,000	R	\$135,000,000	R
Continue existing benefits in the State Employee Health Benefit Plan's self-insured indemnity program with continued full employer funding for employee and retiree individual premiums; increased employer premiums also provided to HMOs.	\$0	NR		
5 Prescription Drug Card Program for State Employees	\$10,000,000	R	\$12,000,000	R
Implement a prescription drug card program in the State Employee Health Benefit Plan's self-insured indemnity program effective January, 2000 by replacing deductible and 20% coinsurance assessed members of the program for outpatient prescription drugs with prescription copayments paid by members to pharmacies at the time of purchase; increased employer premiums also provided to HMOs.	\$0	NR		
6 Contributions to Retiree Health Premium Reserve	\$0	R		
Suspend surcharge on employer retirement contributions for retiree health benefit premiums for 1999-2000 only; 1999-2000 retiree health benefit premiums funded out of \$270 million balance in State's Reserve for Retiree Health Benefits.	(\$144,000,000)	NR		
7 Reduce Funds for Retirement Rate Adjustment	(\$900,000)	R	(\$900,000)	R
Due to actuarial gains in the Consolidated Judicial Retirement System.	\$0	NR		
8 Salary Reductions of Vacated Positions	(\$12,709,439)	R	(\$12,709,439)	R
Reduce by 30% salaries of positions vacated due to retirement during FY 1999-2000. This reduction excludes public school teachers, employees whose salaries are set by statute, and teaching faculty at University and Community Colleges.	\$0	NR		
9 Consolidated Mail Service	(\$1,000,000)	R	(\$1,500,000)	R
Cost reductions due to consolidation of 26 mailrooms into one Consolidated Mail Service (CMS) under the management of the Department of Administration.	\$0	NR		

Statewide Reserves

Page L 2

10 Debt Service		\$193,066,878	R	\$291,865,498	R
Debt Service FY 1999-2000:		\$0	NR		
Adjusted Governor's Rec.	248,138,378				
Interest Rate Change	(4,071,500)				
Receipts Recurring	(16,500,000)				
Receipts Non-Recurring	(34,500,000)				
Total	193,066,878				
Debt Service FY 2000-2001					
Adjusted Governor's Rec.	312,251,998				
Interest Rate Change	(3,886,500)				
Receipts Recurring	(16,500,000)				
Total	291,865,498				
<hr/>					
Total Reserves		\$686,157,439	R	\$821,456,059	R
		(\$127,600,000)	NR		
<hr/>					



Section M: Capital

Section M Capital

Capital

GENERAL FUND

FY 99-2000

FY 2000-01

Department of Administration

1 Indian Cultural Center - Reserve

Establishes a reserve to be used for land acquisition. \$250,000 NR

Department of Agriculture and Consumer Services

2 Construction of Multipurpose Building

Funds construction of multi-purpose facility at the State Fairgrounds. Appropriation for design and site development was made in 1998 Session. \$9,500,000 NR

3 Eastern Agriculture Center

Funds for continued development of the Eastern Agriculture Center. \$1,000,000 NR

4 Western North Carolina Farmers Market

Provides for expansion of the Small Dealers Building at the Western North Carolina Farmers Market. \$250,000 NR

5 Southeastern Farmers Market and Agriculture Center

Continued development of the Southeastern Farmers Market and Agriculture Center. \$500,000 NR

6 Vernon James Research & Extension Center

Funds Phase II of the Headhouse-Greenhouse project. \$827,168 NR

Department of Community Colleges

7 Community College Grants

Provides grants of \$250,000 to each of 58 existing community colleges for purposes of capital improvements or land acquisition. These funds are not subject to a matching requirement. \$14,500,000 NR

Department of Cultural Resources

8 Museum of Art Expansion and Renovation

Continued development of the expansion and renovation of the North Carolina Museum of Art. \$1,000,000 NR

Capital

Department of Environment and Natural Resources

9 Civil Works Projects

Provides state match for civil works projects. Specific projects are listed in special provision entitled "Water Resources Project Development Funds."

\$9,245,000 NR

10 Museum of Natural Science

Provides funds for facility upfit and preparation of exhibits.

\$4,000,000 NR

11 Reserve for Forestry Headquarters

Provides funds for construction of Division of Forestry county headquarters. Projects are to be identified by the Department in accordance with needs priority.

\$2,000,000 NR

12 Museum of Forestry

Provides capital funds for the Museum of Forestry in Columbus County.

\$250,000 NR

Department of Health and Human Services

13 Whitaker School Construction

\$5,400,000 NR

14 Eastern Vocational Rehab Facility

Provides supplemental funds for repairs and renovations at the Eastern Vocational Rehabilitation Facility in Goldsboro.

\$2,000,000 NR

Office of Juvenile Justice

15 Stonewall Jackson School

Provides funds for demolition and removal of old homes on confined grounds at Stonewall Jackson School.

\$337,000 NR

State Ports

16 Port Facilities

Provides funds to continue ports facilities development in accordance with Ports Authority schedule of priorities.

\$6,000,000 NR

Capital

UNC Board of Governors

17 Focused Enrollment Growth Capital

Provides supplemental funds to meet repair and renovations needs on campuses with planned high enrollment growth. Related special provision is entitled "UNC Enrollment/Capital."

\$20,000,000 NR

Total Capital Appropriation

\$77,059,168 NR



STATE OF NORTH CAROLINA
DEPARTMENT OF STATE,
RALEIGH, DECEMBER 16, 1999

I, ELAINE F. MARSHALL, Secretary of State of North Carolina hereby certify that the foregoing volume was printed under the direction of the Legislative Services Commission from ratified acts and resolutions on file in the office of the Secretary of State.

A handwritten signature in black ink, reading "Elaine F. Marshall". The signature is written in a cursive style with a large initial "E" and "M".

Secretary of State

APPENDIX

EXECUTIVE ORDERS OF GOVERNOR JAMES B. HUNT, JR.

Title	Number
EXTENDING EXECUTIVE ORDERS	141
AMENDING EXECUTIVE ORDER NUMBER 16 THE GEOGRAPHIC INFORMATION COORDINATING COUNCIL AND THE CENTER FOR GEOGRAPHIC INFORMATION ANALYSIS	142
ESTABLISHING THE NORTH CAROLINA INFORMATION HIGHWAY COUNCIL OF ADVISORS AND THE NORTH CAROLINA INFORMATION HIGHWAY POLICY COMMITTEE.....	143
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FLOYD 165

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State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 141 EXTENDING EXECUTIVE ORDERS

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

The following Executive Orders are extended for two years from the effective date provided below:

Executive Order No. 26, Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.

Executive Order No. 27, Governor's Commission for Recognition of State Employees.

Executive Order No. 29, Teacher Advisory Committee.

Executive Order No. 30, Highway Beautification Council.

Executive Order No. 34, Highway Safety Commission.

Executive Order No. 47, Board of Education for the Schools for the Deaf.

Executive Order No. 81, Creation of the Family Support Trust Fund.

Executive Order No. 88, Statewide Flexible Benefits Program.

Executive Order No. 91, Persian Gulf War Memorial Commission.

Executive Order No. 92, Council for Young Adult Drivers.

Executive Order No. 129, Governor's Task Force on Driving While Impaired.

This order shall be effective the first day of January, 1999.

Done in Raleigh, North Carolina, this the 21st day of December, 1998.



James B. Hunt Jr.
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NUMBER 142
AMENDING EXECUTIVE ORDER NUMBER 16
THE GEOGRAPHIC INFORMATION COORDINATING COUNCIL
AND
THE CENTER FOR GEOGRAPHIC INFORMATION AND ANALYSIS

By the authority vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. Amendment

Section 4 of Executive Order Number 16, as previously amended by Executive Order Number 124, is hereby further amended by adding the following members and provisions:

- t) The President of the North Carolina Community College System;
- u) The President of the University of North Carolina System; and,
- v) Such other individuals whom the Governor deems appropriate to enhance the efforts of geographic information coordination.

The addition of the President of the North Carolina Community College System and the President of the University of North Carolina System shall bring the Council's membership to twenty-one members. Any additional members appointed by the Governor pursuant to subsection "v" above shall correspondingly increase the Council's membership accordingly.

The President of the North Carolina Community College System and the President of the University of North Carolina System shall serve continuously in the same manner as those members identified in subsections "a-g," "i-l," "r" and "s" in Executive Order Number 16, as amended.

Any member appointed pursuant to subsection "v" shall serve a term of three years from the date of appointment.

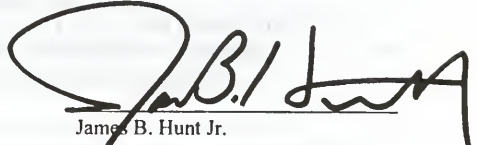
Subject to this amendment and the provisions within Executive Order Number 124, all provisions of Executive Order Number 16, as amended, shall remain in full force and effect.

Section 2. Effective Date

This executive order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 19th day of January, 1999.




James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 143
ESTABLISHING THE NORTH CAROLINA INFORMATION HIGHWAY
COUNCIL OF ADVISORS AND THE NORTH CAROLINA
INFORMATION HIGHWAY POLICY COMMITTEE

WHEREAS, the continued successful implementation of the North Carolina Information Highway is critical to improving the economic vitality of the State through the employment of information technology for economic development and to enhancing the quality of life of all citizens, particularly in the delivery of health services, the education of its citizens, the training of its workforce, the providing of greater public safety through the development of an integrated criminal justice information system, the offering of more integrated, effective and efficient services to citizens by state and local governments and the deployment of information technology to citizens utilizing our libraries as gateways; and

WHEREAS, it is important that the North Carolina Information Highway continue to be developed from a broad perspective utilizing the knowledge of a diverse group of citizens at the advisory level and a group of internal and external public officials as a policy committee.

NOW, THEREFORE, by the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment

The North Carolina Information Highway Council of Advisors and the North Carolina Information Highway Policy Committee are hereby established.

Section 2 Definitions

For the purposes of this Executive Order, the following definitions apply:

- A. The term "Council" means the North Carolina Information Highway Council of Advisors;
- B. The term "Policy Committee" means the North Carolina Information Highway Policy Committee;
- C. "North Carolina Information Highway" (NCIH) means the advanced telecommunications networks operating with high-speed increased capacity and capabilities and any other voice, data, video, imaging, other network or application that might be interoperable or interconnected with the North Carolina Information Highway. North Carolina Information Highway also refers to the efforts to assist North Carolina citizens, industry, government, education, health and communities to constantly seek to have access to excellent telecommunications networks that operate in a competitive environment or may need to have further involvement from the state temporarily in assisting with appropriate access to information networks.

Section 3. Purpose and Intent

The purpose of the Council and the Policy Committee is to advise the Governor, the Information Resources Management Commission (IRMC), the North Carolina General Assembly and the Department of Commerce on any matters pertaining to the NCIH. The Policy Committee shall also make such recommendations as it deems necessary to the Information Highway Grants Advisory Council.

Section 4. Membership

A. The Council shall consist of 30 members. The Speaker of the House shall serve on the Council and appoint 4 additional members and the President Pro Tem of the Senate shall serve on the Council and appoint 4 additional members. The Governor shall request the Chair of the IRMC, the Chair of the North Carolina Utilities Commission, the Chair of the Policy Committee, the Chief Executive officer of the Microelectronics Center of North Carolina (MCNC) and the Secretary of the Department of Commerce to serve as ex-officio members of the Council. The Governor shall appoint the remaining 15 members of the Council, including the Chair. The appointing authorities shall consider interest in the State's telecommunications

policies related to the ability of the State to provide responsive and cost-effective services to its citizens. To the extent possible, efforts should be made to represent all geographical areas of the State. The President of the University of North Carolina System, the President of the Community College System, the State Superintendent for Public Instruction, the Executive Director of the League of Municipalities, the Executive Director of the Association of County Commissioners, the Chair of the Employment Security Commission, the Director of the Association of Independent Colleges and the director of a major health organization that promotes the use of telehealth shall all be strongly considered for membership.

Of the Governor's appointees, six shall be professionals from private industry and shall be from the ranks of leaders in either the field of information or telecommunications technology or senior business leaders with experience in applying these technologies and services on an enterprise-wide basis. To augment this group for accomplishing its expanded responsibilities, the Secretary of Commerce may appoint up to four individuals from nonprofit organizations, local or federal government agencies, universities or research institutions to serve with it when meeting as an additional advisory body.

The NCIH Council of Advisors shall meet at least once yearly. They will work with the Policy Committee to involve the business, educational and governmental communities and the citizens at large to understand the North Carolina Information Highway, applications that can use these information networks and their benefits to the State of North Carolina.

B. Members of the Policy Committee and its Chair shall be appointed by the Governor. The Policy Committee shall be composed of individuals who represent agencies of the State of North Carolina including, but not limited to, representatives from the Council of State and Cabinet agencies, the University of North Carolina System, the North Carolina Community College System, the independent higher education sector and the K-12 community. A staff member from the IRM, a staff member from the Secretary of Commerce's Office, a member of the MCNC Advanced Networking Group, a staff member from either the League of Municipalities or the Association of County Commissioners and two staff members from the Governor's Office for Technology shall be appointed by the Governor. Representatives of public or private nonprofits shall be considered for membership. Membership on this Policy Committee should reflect the membership of the former NCIH Planning Committee. Local,

state and federal government representatives shall be considered for membership on this committee. The Committee may form subcommittees, as desired, to help in the performance of its duties and responsibilities. These may include, but are not limited to: technology, training, applications, public relations, finance, rates, regional committees, etc. The Committee will establish Regional Committees that will report their findings and recommendations to the Policy Committee on a regular basis.

Regional Committees on Information Technology Networks should be represented on the NCIH Policy Committee. An elected representative of each Regional Committee on Information Technology Networks as established by the NCIH Policy Committee shall serve on the Policy Committee. The Regional Committees should be responsible for assisting with the education of the citizens, business, education, health, government and nonprofit entities in the region regarding the issues of connectivity. They may or may not choose to become nonprofit 501(c)(3) organizations. Regional Committee members shall serve a term of one year on the Policy Committee and may serve additional terms if so elected by their Regional Committee. The name of the person who shall serve on the Policy Committee shall be forwarded to the Policy Committee by June 30th of each year.

A member of the Policy Committee, designated by the Policy Committee or the Governor shall be authorized to sit on the IRMC as a voting member.

The Policy Committee shall provide guidance and direction to the NCIH Council of Advisors. It shall use its experience and knowledge to provide unified recommendations on NCIH future directions to the IRMC, to recommend proposed NCIH standards to the IRMC, to integrate applications among agencies, to promote interoperability, and to coordinate integration efforts across state and local government agencies and when requested to federal and other agencies and organizations.

The Policy Committee, the Department of Commerce and the IRMC should work closely together. During critical periods of the NCIH they should be in constant communication. To facilitate this, it is requested that the Secretary of Commerce encourage the NCIH staff to attend all meetings of the Policy Committee. The Department of Commerce and the Information Resources Management Commission will continue to have the authority over telecommunications currently identified for each by the General Statutes of North Carolina.

C. Members of the Council and the Policy Committee shall serve two-year terms and may be reappointed. The original appointing authority shall fill vacancies for the balance of the unexpired terms.

D. A majority of the members of the Council shall constitute a quorum for the transaction of business of the Council. A majority of the members of the Policy Committee shall constitute a quorum for the transaction of business of the Policy Committee.

E. The Council members shall receive no salary. Subsistence and travel expenses are available for those who could not serve without reimbursement, in accordance with the North Carolina General Statutes 120-3.1, 138-5 and 138-6, as applicable. Members of the General Assembly will be requested to use their General Assembly funds to reimburse them for their expenses. Policy Committee members will receive any reimbursement from their respective agencies.

F. The staff for the Council shall be the Policy Committee. The Office of the Governor, the IRMC and the Department of Commerce shall provide staff for the Policy Committee. State entities that have members on the Policy Committee may be requested to provide some staff assistance to the Policy Committee.

G. The NCIH Policy Committee shall elect a vice chair and a secretary from among its members. These two officers and the chair shall constitute the Executive Committee.

Section 5. Responsibilities.

The NCIH Policy Committee shall make a report to the Executive Cabinet annually. In addition, it shall file a report with the Governor, the IRMC, the Secretary of Commerce and the General Assembly at least twice per year. The report may make recommendations on the NCIH implementation in the public schools, universities and community colleges of North Carolina, the libraries, the criminal justice system, intergovernmental and economic development activities, health services delivery, state and local agencies and any other recommendations they might choose to make about the planning and implementation of the NCIH. Upon request, the Council shall also report to the Education Oversight Committee, the Education Cabinet and any other General Assembly Oversight Committees.

The NCIH Policy Committee shall direct recommendations that it cannot implement itself to the Secretary of Commerce, state Information Technology Services, the IRMC or other appropriate body and request consideration and/or implementation.

Section 6. Funding

Money for the carrying out of this Executive Order shall come from the funds of the State already appropriated. The Council and the Policy Committee may also receive funds from other public and/or private for-profit and nonprofit foundations.

Section 7. Succession

Membership succession for each of the positions noted in this Executive Order shall be by their original appointing body. The North Carolina Information Highway Policy Committee may desire to become a self-supporting organization designated as a nonprofit 501(c)(3) and is authorized to explore this option.

Section 8. Effect on Other Executive Orders.

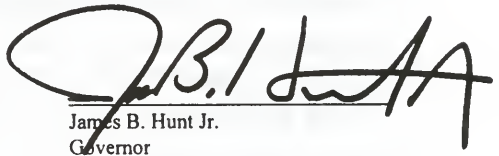
Executive Order Number 68 and all other prior Executive Orders (or portions of prior Executive Orders) inconsistent herewith are rescinded.

This order is effective immediately and shall remain in effect until rescinded.

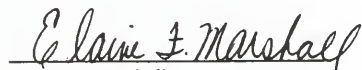
Done in the Capital City of Raleigh, North Carolina, this the 14th day of

January, 1999.




James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 144
FIRST IN AMERICA: A GOAL FOR NORTH CAROLINA'S SCHOOLS

WHEREAS, the young people of North Carolina must be educated and equipped to compete with anybody anywhere and capable of outworking and outthinking our competitors across the nation and around the world in the 21st Century economy; and,

WHEREAS, our children must start school healthy and ready to learn, attend good, well-built, well-equipped and safe schools, have caring, committed, excited, and inspiring teachers every year, earn high school diplomas that mean they can think for a living, go to college and acquire the skills and knowledge they'll need to get a good job, have a good career, be good citizens and provide good lives for their families; and,

WHEREAS, North Carolina's elected officials, business and education leaders, teachers, parents, and all citizens are committed to excellence in education and making "First in America" a goal for North Carolina's Schools.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. The North Carolina Education Cabinet will develop a set of "First in America Goals" to be reached by 2010.

The North Carolina Education Cabinet, chaired by the Governor and including the State Superintendent of Public Instruction, the Chairman of the State Board of Education, the President of the University of North Carolina system, and the President of the North Carolina Community Colleges, will develop a set of "First in America School Goals" by September 1, 1999. The Education Cabinet shall invite the adjunct member representing the independent colleges and universities to participate in its

deliberations. These goals will set out what it will take to be First in America by 2010 and will include these measures of true excellence in education:

- 1st. Getting young children ready to start school healthy and ready to learn.
- 2nd. Putting in rigorous academic standards.
- 3rd. Ensuring that teachers are trained in the subjects they teach.
- 4th. Requiring all teachers to undergo stringent evaluations throughout their careers.
- 5th. Turning around schools where students aren't learning.
- 6th. Enforcing tough discipline policies.
- 7th. Requiring meaningful high school graduation exams.
- 8th. Getting parents, businesses and communities involved in schools.
- 9th. Finding a volunteer mentor for every child who needs one.
- 10th. Developing a report card for every school in our state that gives parents and taxpayers information on test scores, school safety, graduation rates, teacher qualifications and related data that will tell us how we're doing and whether we're on track to be First in America by 2010.

Section 2. The State Education Commission will develop implementation strategies for each of the education sectors to assist the Education Cabinet in reaching the First in America Goals.

The State Education Commission, consisting of the Board of Governors of The University of North Carolina, the State Community College Board, and the State Board of Education, will review the First in America by 2010 Goals developed by the Education Cabinet and develop implementation strategies and time lines for each of the sectors and submit them to the Education Cabinet for approval by July 1, 2000.

Section 3. The North Carolina Research Council will design a State Education Report Card, track progress and issue an annual progress report.

The North Carolina Research Council, under the direction of the Education Cabinet and in cooperation with the Education Commission, will design a state education report card, track progress and issue an annual progress report. Data related to the First in America Goals and measures set by the Education Cabinet will be provided by

the three public school sectors. The Research Council will analyze the data to determine the state's progress and publish and disseminate an annual report that reflects the overall progress of the state.

Section 4. Advisory Groups

The Education Cabinet may appoint advisory groups to assist with its work and to solicit input from education, business, and community constituents. Advisory group members shall serve without compensation but, subject to the availability of funds, shall be eligible for per diem, travel, and subsistence as provided by North Carolina rules, regulations, and General Statutes.

Section 5. Cooperation of Governmental Agencies

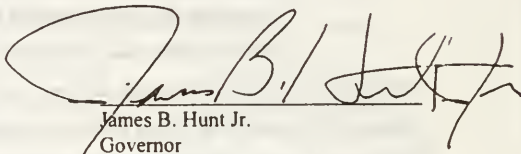
The heads of all state departments and agencies shall, to the extent permitted by law, provide the Education Cabinet with information required to achieve the purposes of the Order.

Section 6. Effective Date

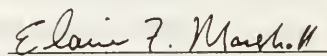
This order is effective immediately and shall remain in effect until rescinded by the Governor.

Done in the Capital City of Raleigh, North Carolina, this the 4th day of February, 1999.




James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 145 GOVERNOR'S COMMISSION ON DOMESTIC VIOLENCE

WHEREAS, all North Carolinians deserve to live free from fear and harm arising out of domestic violence; and,

WHEREAS, domestic violence is an issue that threatens the safety of thousands of North Carolinians and is one of the most important problems facing our state; and,

WHEREAS, domestic violence deeply and dramatically affects children, victims, perpetrators, families, and communities, and often causes severe physical, emotional, and economic distress; and,

WHEREAS, victims should receive protection and assistance and batterers should be held accountable in North Carolina; and,

WHEREAS, this administration has taken important steps to stop the cycle of domestic violence by expanding victims' services, boosting the criminal justice response, increasing batterers' accountability, and supporting rights for domestic violence victims under victims' rights legislation; and,

WHEREAS, a response to and prevention of domestic violence must be comprehensive and should involve agencies, organizations, individuals and groups at the state and local level; and,

WHEREAS, this administration is committed to developing such a comprehensive, statewide response to domestic violence.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section I. Governor's Commission on Domestic Violence Established

The Governor's Commission on Domestic Violence is hereby established. The Commission shall be located in the Department of Administration for organizational, budgetary, and administrative purposes.

The Commission shall consist of 28 members and shall reflect the geographic and cultural diversity of the state. The membership shall include: a representative of the law enforcement community with specialized knowledge in domestic violence; a representative of the Institute of Government; the Secretaries for the Departments of Crime Control and Public Safety, Health and Human Services, Correction, and Administration or their designees; the Superintendent of Public Instruction; the Director of the Office of State Personnel; the Executive Director of the North Carolina Council for Women; a representative of the Governor's Crime Commission; a representative of the Administrative Office of the Courts or a member of the judiciary; a citizen representative; a District Attorney; a specialist in civil rights or a member of the North Carolina Academy of Trial Lawyers; a legal services representative; a representative from a United States Attorney's office located in North Carolina; a representative from the cultural and linguistic minority communities; a representative from the medical community; a representative from the North Carolina Coalition Against Domestic Violence; a representative from the business community; two members each from the North Carolina House of Representatives and North Carolina Senate; and four representatives from victim service programs eligible for funding by the Governor's Crime Commission or the North Carolina Council for Women, one program of which shall provide batterers' intervention services.

The Governor may also appoint non-voting ex officio members of the Commission as necessary.

Section 2. Chair, Vice Chair, and Honorary Co-Chairs

The Governor shall appoint a Chair from the membership of the Commission, and may name such honorary co-chairs as he may deem desirable. The Commission shall elect from among its members a Vice Chair and other officers as are determined necessary.

Section 3. Duties and Responsibilities

The Commission shall study, analyze, and provide information to the Governor on North Carolina's response to and prevention of domestic violence on an on-going basis and make legislative and administrative recommendations so that victim safety and offender accountability are promoted by:

- a. Developing a strategic plan to prevent and respond to domestic violence in North Carolina;
- b. Overseeing and assisting in the development of training initiatives across a multitude of systems including but not limited to: criminal justice, health care, education, government, and private sector employers;
- c. Assessing statewide needs and assuring that necessary services, policies and programs are in place;
- d. Promoting public education and awareness;
- e. Researching and developing information on best practices in domestic violence programs and promoting their adoption statewide;
- f. Providing or coordinating the provision of training, materials and assistance in policy development to all state agencies;
- g. Working towards the passage and promotion of all recommendations outlined in the final report by the Governor's Task Force on Domestic Violence; and,
- h. Addressing other related issues assigned to it by the Governor.

Specifically, within the first six months of operation, the Commission will assist in developing plans for each of the 26 counties in North Carolina currently having no in-county domestic violence service provider. In addition, within the first year of operation, the Commission should study and make recommendations to the legislature regarding

sentencing practices for domestic violence offenders; study and determine how to implement a pro-arrest policy statewide; strengthen the accountability of batterers' intervention programs; encourage uniform crime reporting in North Carolina; and design and begin to implement a public awareness campaign on domestic violence. The Commission will work with the Office of State Personnel to strengthen the State's current policy on workplace violence by incorporating domestic violence issues into training and policies with a goal of eliminating the harmful effects of domestic violence from the state workplace.

Section 4. Commission Meetings

The Commission shall meet at least 6 times per year. Meetings shall be conducted in compliance with the North Carolina Open Meetings Law.

Section 5. Public Hearings

The Commission is authorized to hold public hearings on the specific issues under consideration by it, to visit facilities and agencies related to or involved in the specific issues under its consideration, and to receive input from citizens about these issues.

Section 6. Per Diem, Travel and Subsistence

Members of the Commission shall serve without compensation but, subject to availability of funds, shall be eligible for per diem, travel, and subsistence as provided by North Carolina rules, regulations, and General Statutes.

Section 7. Reporting Requirements

The Commission shall submit an annual report including administrative and legislative recommendations to the Governor.

Section 8. Staff Support

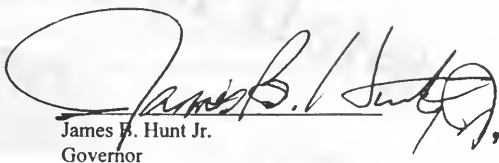
The Governor shall appoint an Executive Director who shall provide staff for the Commission through funds administered by the Department of Administration.

Section 9. Effective Date

This order is effective immediately and shall remain in effect until rescinded by the Governor.

Done in the Capital City of Raleigh, North Carolina, this the 25th day of
February, 1999.




James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 146
NORTH CAROLINA INTERAGENCY COUNCIL
FOR COORDINATING HOMELESS PROGRAMS

WHEREAS, the problem of homelessness denies a segment of our population their basic need for adequate shelter; and,

WHEREAS, several State agencies offer programs and services for homeless persons; and,

WHEREAS, to combat the problem of homelessness most effectively, it is critical that these agencies coordinate program development and delivery of essential services.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment

The North Carolina Interagency Council for Coordinating Homeless Programs (the "Interagency Council") is hereby established.

Section 2. Membership

The Interagency Council shall consist of a chairman appointed by the Governor and 31 additional members who shall be appointed by the Governor from the following public and private agencies and categories of qualifications:

- (a) One member from the Department of Administration.
- (b) One member from the North Carolina Housing Finance Agency.
- (c) One member from the Office of State Planning.
- (d) One member from the North Carolina Community College System.
- (e) One member from the Department of Correction.
- (f) One member from the Department of Cultural Resources.

- (g) One member from the Department of Commerce.
- (h) Two members from the Department of Health and Human Services, one representing the Division of Mental Health, Developmental Disabilities and Substance Abuse Services and one representing the AIDS Care Branch.
- (i) One member from the State Board of Education or a member from the Department of Public Instruction.
- (j) One county government official.
- (k) One city government official.
- (l) Six members from non-profit agencies concerned with housing issues and service provision to the homeless.
- (m) Three homeless or formerly homeless persons.
- (n) Two members from the private sector.
- (o) Four members of the North Carolina Senate.
- (p) Four members of the North Carolina House of Representatives.

Section 3. Chair and Terms of Membership

The Chair of the Interagency Council shall serve a term of three years. Initial terms of membership for the other members of the Interagency Council shall be staggered with those members from state departments or agencies and the North Carolina General Assembly serving three year terms and other members serving two year terms. Each appointment thereafter shall be for a term of two years.

Section 4. Meetings

The Interagency Council shall meet quarterly and at other times at the call of the Chair or upon written request of at least five (5) of its members.

Section 5. Functions

- (a) The Interagency Council shall advise the Governor and Secretary of the Department of Health and Human Services on issues related to the problems of persons who are homeless or at risk of becoming homeless, identify and secure available resources throughout the State and nation and provide recommendations for joint and cooperative efforts and policy initiatives in carrying out programs to meet the needs of the homeless.

- (b) The Interagency Council shall set short-term and long-term goals and determine yearly priorities.
- (c) The Interagency Council shall submit an annual report to the Governor, by November 1, on its accomplishments and the status of homelessness in North Carolina.

Section 6. Expenses

Council administrative costs, special function expenses and the cost of member per diem, travel and subsistence expenses shall be paid from state funds appropriated to the Department of Health and Human Services.

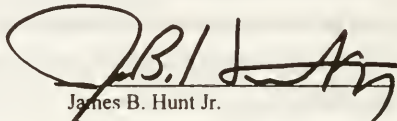
Section 7. Staff Assistance

The Office of Economic Opportunity of the Department of Health and Human Services shall provide administrative and staff support services required by the Interagency Council.

This Executive Order is effective immediately and shall remain in effect until rescinded.

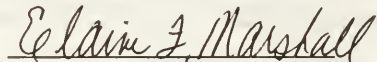
Done in the Capital City of Raleigh, North Carolina, the 5th day of

April, 1999.



James B. Hunt Jr.
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 147
GOVERNOR'S TASK FORCE FOR
HEALTHY CAROLINIANS

WHEREAS, North Carolina is blessed with some of the finest medical facilities and medical care found anywhere in the world; and

WHEREAS, despite these resources, more than forty North Carolinians die prematurely each day, exacting an enormous economic, social and personal toll upon our society; and

WHEREAS, most of these deaths are preventable by relatively simple changes in individual lifestyle behavior; and

WHEREAS, in order to provide to the citizens of our state a way to prevent this tragic loss of death and disability, a realistic plan needs to be developed that communities and individual citizens may use to improve their health status and avoid premature deaths; and

WHEREAS, this plan must promote the advantages of health promotion and disease prevention.

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment and Rescission of Prior Orders

The Governor's Task Force for Healthy Carolinians (Governor's Task Force) is hereby established. The Governor's Task Force established herein is the successor organization to the Governor's Task Force on Health Objectives for the Year 2000, established in Executive Order 56. That Order is hereby rescinded.

Section 2. Membership

The Governor's Task Force shall have 37 members. The Governor shall appoint 33 members, including the Chair. The Vice Chair shall be elected by the Governor's Task Force. The President Pro Tempore of the Senate shall be invited to appoint two Members of the Senate, one of whom serves on the Public Health Study Commission. The Speaker of the House of Representatives shall be invited to appoint two members of the House, one of whom serves on the Public Health Study Commission. Each member of the Task Force that is not a specifically designated appointment by virtue of an office or position (e.g., Dean, School of Public Health, UNC-CH), shall be appointed for terms of one to four years, staggered as necessary to permit even rotation of membership, and will serve until appointment of a successor. A vacancy on the Governor's Task Force shall be filled by the original appointing authority.

The Governor shall appoint representatives from the following:

- a. Secretary, Department of Health and Human Services, or designee;
- b. Association of North Carolina Boards of Health;
- c. North Carolina Hospital Association;
- d. North Carolina Medical Society;
- e. North Carolina Academy of Family Physicians;
- f. North Carolina Association of Local Health Directors;
- g. Dean, School of Public Health, University of North Carolina-CH, or designee;
- h. North Carolina Citizens for Business and Industry;
- i. North Carolina Commission on Indian Affairs;
- j. North Carolina Association of County Commissioners;
- k. NAACP;
- l. Mental Health/Developmental Disabilities/Substance Abuse Services Division, DHHS
- m. Women's and Children's Health Section, DHHS

- n. Director, Office of Research, Demonstrations and Rural Health Development, DHHS, or designee;
- o. North Carolina Dental Society;
- p. North Carolina Nurses' Association;
- q. Old North State Medical Society;
- r. North Carolina Public Health Association;
- s. Commissioner, NC Department of Agriculture and Consumer Services, or designee;
- t. Office of Minority Health, DHHS;
- u. Superintendent of Public Instruction, or designee;
- v. Governor's Council on Physical Fitness and Health;
- w. Ten at-large members, including a representative of local education, religious organization, older adults and non-profit organizations.

Section 3. Functions

- a. The Governor's Task Force shall meet regularly at the call of the Chair.
- b. The Governor's Task Force will advise the State Health Director and the Secretary of the Department of Health and Human Services on policies, programs and resources needed to improve the public's health in North Carolina.
- c. The Governor's Task Force shall have the responsibility of developing and delivering to the Governor no later than September 1, 2000, a list of health objectives for the Year 2010 for the citizens of North Carolina designed to:
 - 1. Increase the span of healthy life of the citizens of North Carolina;
 - 2. Remove health disparities among the disadvantaged;
 - 3. Promote access to preventive health services;
 - 4. Protect the public's health;
 - 5. Foster positive and supportive living and working conditions in our communities; and

6. Support individuals to develop the capacities and skills to achieve healthy living.

These objectives must:

1. Be measurable;
2. Include measures to benefit our disadvantaged populations;
3. Emphasize individual and community intervention;
4. Emphasize the value of health promotion and disease prevention to our society; and
5. Be obtainable by the Year 2010.

d. The Governor's Task Force shall have the power to designate local Healthy Carolinians Task Forces, comprised of representatives of public and private organizations, and community members and leaders, which support the goals of the Governor's Task Force. They shall seek to further the State Health Objectives for the Year 2010 set by the Governor's Task Force.

e. The Governor's Task Force shall provide encouragement and guidance to communities establishing their own local groups to accomplish the objectives developed by the Governor's Task Force.

Section 4. Administration

a. Administrative support for the Governor's Task Force shall be provided by the Department of Health and Human Services.

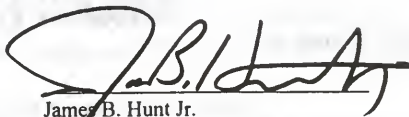
b. Members of the Governor's Task Force shall be reimbursed for necessary travel and subsistence expenses as authorized under General Statutes 138-5 and 138-6. Funds for the reimbursement of such expenses shall be made available from funds authorized by the Department of Health and Human Services.

c. It shall be the responsibility of each Cabinet department to make every reasonable effort to cooperate with the Governor's Task Force in carrying out the provisions of this Order.

This Executive Order is effective immediately and shall remain in effect until rescinded.

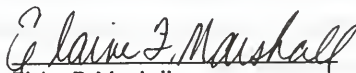
Done in the Capital City of Raleigh, North Carolina, this 5~~H~~ day of

April, 1999.



James B. Hunt Jr.
Governor

ATTEST



Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 148 GOVERNOR'S COMMISSION ON RESPONSIBLE FATHERHOOD

WHEREAS, children need a good early childhood education, safe schools, dedicated teachers, and engaged and involved parents to succeed in life; and,

WHEREAS, almost one-third of North Carolina's children are growing up in families without fathers; and,

WHEREAS, children growing up in families without fathers are at great risk of failing school, taking drugs and getting in trouble with the law; and,

WHEREAS, many fathers struggle to give their children the level of parenting they deserve; and,

WHEREAS, this Administration has taken important steps in promoting responsible fatherhood by boosting child support enforcement, promoting programs aimed at fathers through Smart Start and by working to raise public awareness of the importance of fatherhood; and,

WHEREAS, North Carolina needs to do more to help fathers become and stay involved in the lives of their children; and,

WHEREAS, North Carolina has tremendous resources to be organized and mobilized to encourage and support responsible fatherhood.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Governor's Commission on Responsible Fatherhood Established

The Governor's Commission on Responsible Fatherhood is hereby established.

The Commission shall be located in the Department of Health and Human Services for organizational, budgetary, and administrative purposes.

The Commission shall consist of 15 members and shall reflect the geographic and cultural diversity of the state. Members shall serve at the pleasure of the Governor. The membership shall include:

- a. Three representatives from the faith community;
- b. Three representatives from the business community;
- c. Two representatives from the nonprofit community;
- d. One representative from local government;
- e. One representative from state government;
- f. One representative from the legal community; and,
- g. Four at-large members.

The Governor may also appoint non-voting ex officio members of the Commission as necessary.

Section 2. Chair, Vice Chair, and Honorary Co-Chairs

The Governor shall appoint a Chair from the membership of the Commission.

The Commission shall elect from among its members a Vice Chair and other officers as are determined necessary. The Governor and the Secretary of the Department of Health and Human Services shall serve as honorary co-chairs.

Section 3. Duties and Responsibilities

The Commission shall study, analyze and provide information to the Governor on programs to help North Carolina fathers and make legislative and administrative recommendations so that responsible fatherhood is promoted by:

- a. Developing a strategic plan to promote responsible fatherhood in North Carolina;
- b. Developing a recommendation for a workplace policy for state government that promotes responsible fatherhood;

- c. Overseeing and assisting the development of initiatives to help fathers with poor skills and limited education to gain the skills they need to support their children;
- d. Assuring that North Carolina's welfare reform efforts include strategies for moving non-custodial fathers into employment;
- e. Assessing statewide needs and ensuring that necessary services, policies and programs are in place;
- f. Researching and developing information on best practices in fatherhood programs and promoting their adoption statewide;
- g. Promoting public education and awareness;
- h. Providing or coordinating the provision of training, materials and assistance to state agencies; and,
- i. Addressing other related issues assigned to it by the Governor;

Section 4. Commission Meetings

The Commission shall meet at least twice a year. Meetings shall be conducted in compliance with North Carolina Open Meetings Law.

Section 5. Per Diem, Travel and Subsistence

Members of the Commission shall serve without compensation but, subject to the availability of funds, shall be eligible for per diem, travel and subsistence as provided by North Carolina law and policy.

Section 6. Reporting Requirements

The Commission shall submit an annual report including administrative and legislative recommendations to the Governor.

The Commission shall submit to the Governor, by October 31st of this year, its recommendations for a workplace policy for state government that promotes responsible fatherhood.

Section 7. Staff Support

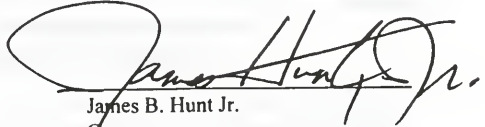
Staff support shall be provided by the Department of Health and Human Services.

Section 8. Effective Date

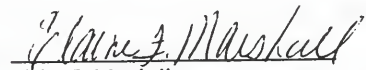
This order is effectively immediately and shall remain in effect for a period of two years from the date of execution provided below.

Done in the Capital City of Raleigh, North Carolina, this the 12th day of April, 1999.




James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 149
CLEAN NC 2000 BOARD

WHEREAS, North Carolina's beautiful scenery and clean environment are a source of great pride; and,

WHEREAS, a clean environment impacts economic development and travel and tourism; and,

WHEREAS, there is need to improve the appearance of our roadsides by removing litter, collapsing or unsafe structures, and other debris that create eyesores and harm the environment; and,

WHEREAS, citizens need to be educated about the harmful effects of litter on the environment; and,

WHEREAS, as we enter into the new millennium there is a need for a statewide effort to ensure clean roadsides, rivers, lakes and streams; and,

WHEREAS, as we begin a new millennium, we will recommit ourselves to take personal responsibility to help eliminate litter and become environmental stewards now and in generations to follow.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment

There is hereby established the Clean NC 2000 Board (the "Board").

Section 2. Membership

The Board shall consist of no more than thirty members. Twenty members shall be appointed by, and shall serve at the pleasure of, the Governor. These twenty members

shall be drawn from all geographic areas of North Carolina, shall reflect North Carolina's diverse population, and shall be representative of government, business and industry, community and civic organizations, and education. Of these twenty members, one member shall be a citizen under the age of twenty-one.

In addition to the twenty appointed members noted above, the following ten individuals, or their respective designees, shall serve as ex-officio members:

- a. Secretary of the North Carolina Department of Administration;
- b. Secretary of the North Carolina Department of Correction;
- c. Secretary of the North Carolina Department of Crime Control and Public Safety;
- d. Secretary of the North Carolina Department of Environment and Natural Resources;
- e. Secretary of the North Carolina Department of Cultural Resources;
- f. Secretary of the North Carolina Department of Commerce;
- g. Commissioner of the North Carolina Department of Agriculture and Consumer Services;
- h. Superintendent of the North Carolina Department of Public Instruction;
- i. President of the North Carolina League of Municipalities; and,
- j. President of the North Carolina County Commissioners Association.

Section 3. Chair

The Governor shall serve as Honorary Chair of the Board. The co-chairs shall be appointed by the Governor.

Section 4. Duties

The Board shall have the following duties:

- a. Advise the Governor of the programs and resources needed to improve waste management in North Carolina.
- b. Promote voluntary stewardship of environmental resources by sparking grassroots support in every community to clean up North Carolina's rivers, lakes, streams and roadsides.

- c. Provide a forum for the discussion of issues concerning waste management.
- d. Provide a network to gather and share educational information on solid waste management.
- e. Develop and initiate activities within the State pertaining to solid waste management.
- f. Develop a Clean NC 2000 program by establishing a program representative in each county that will work with organizations such as Keep America Beautiful and others with a similar purpose.

Section 5. Clean NC 2000 Coordinator

There shall be a Clean NC 2000 Coordinator who shall work to carry out the purposes of this Executive Order, including the implementation of Board recommendations.

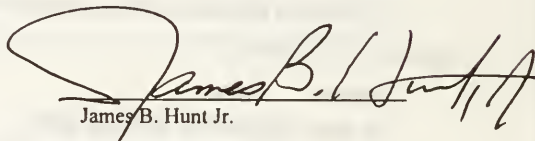
Section 6. Board Report

The Board shall present a final report to the Governor by November 30, 2000. This Executive Order shall terminate and the Board shall be dissolved when this final report is presented.

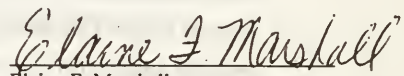
This Order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 19th day of

April, 1999.


James B. Hunt Jr.

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 150 SUPPORT FOR HISTORICALLY UNDERUTILIZED BUSINESSES

WHEREAS, it is North Carolina's collective expectation that all citizens of the state will be given equal opportunities to participate in providing State government with the goods and services it requires; and

WHEREAS, it is my expectation, as Governor of the State, that this will be accomplished without regard to race, gender, or disabling condition; and

WHEREAS, when the General Assembly set the purchasing policy for the State, it encouraged State agencies to provide contracting opportunities for small and historically underutilized businesses (hereinafter "HUBs") as defined in North Carolina General Statutes § 143-48; and

WHEREAS, it is my desire that a coordinated effort is undertaken to eliminate any barriers which may have acted as impediments to equal opportunities for HUBs in doing business with the State.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. Creation of the Office for Historically Underutilized Businesses in the Office of the Secretary of Administration

There is hereby established in the Office of the Secretary of the North Carolina Department of Administration, the Office for Historically Underutilized Businesses (hereinafter "HUBs Office").

Section 2. HUBs Office Responsibilities

The HUBs Office is charged with the responsibilities of:

a. providing technical assistance to HUB vendors. This assistance shall include training and counseling to HUB vendors as they seek opportunities to do business with the State through the Division of Purchase and Contract, the State Construction Office, the State Property Office, or the individual agency, department, university, community college or local school system (hereinafter "agency").

b. working with agency purchasing officers and agency capital projects coordinators to share information about opportunities to do business with HUB vendors. In order to accomplish this task, the HUBs Office shall prepare a data base and directory containing the names of HUB vendors known to it who are interested in doing business with the State or local agencies.

c. coordinating with HUB vendors, agency purchasing officers and agency capital projects coordinators to identify and eliminate barriers or constraints that may restrict HUB vendors from doing business with the State or local agencies.

d. developing positive relationships with North Carolina trade and professional organizations such as the North Carolina Citizens for Business and Industry and the Carolinas Associated General Contractors and encouraging HUB vendors to do the same, so that the business needs and concerns of HUBs are made aware to these larger business entities, which may advise and assist HUBs in doing business with the State.

Section 3. Data Collection and Analysis

The HUBs Office shall collect data from each agency in order to analyze the State and local agencies' purchasing practices with regard to contracting with HUBs. This data shall capture all contracts for goods and services from each agency, and indicate all HUB participation in those contracts, even as subcontractors to a principal contractor.

The HUBs Office shall be responsible for development of a uniform reporting format after consultation with the Secretary of Administration, the State Controller and the HUBs Advisory Council. The State Purchasing Officer, the Director of the State Construction Office, the Director of the State Property Office, and each agency head shall provide quarterly reports in accordance with the uniform reporting format, and any other

requested information, to the HUBs Office for the implementation of this program. A list of all agencies which have so reported shall be included in the quarterly report established below to be submitted to the Governor.

The North Carolina Accounting System located within the Office of the State Controller may assist the HUBs Office in the collection and analysis of purchasing data. The HUBs Office shall be responsible for reporting that information to the Governor on a quarterly basis. The first report shall be presented to the Governor by August 15 of this year. Thereafter, each report shall be due six weeks after the end of the calendar quarter.

Section 4. Creation of the HUBs Advisory Council

a. There is created a HUBs Advisory Council to assist the Secretary and the HUBs Office by providing advice on matters that relate to the furtherance of the objectives of this Executive Order.

b. The Council shall consist of the following members:

- (1) the Governor's Advisor for Minority and Community Affairs;
- (2) the State Purchasing Officer;
- (3) the Director of the State Construction Office;
- (4) the Director of the State Property Office;
- (5) the Executive Director of the North Carolina Council for Women;
- (6) the Director of the Office of Hispanic/Latino Affairs;
- (7) the Executive Director of the Governor's Advocacy Council for Persons with Disabilities;
- (8) the Executive Director of the North Carolina State Commission of Indian Affairs;
- (9) the Chief Purchasing Officer of each of the respective Cabinet agencies, The University of North Carolina, the Department of Community Colleges, and the Department of Public Instruction;
- (10) three HUB owners, one of which shall be a minority, one of which shall be a female, and one of which shall be an owner with a disability;

- (11) two representatives of non-profit organizations having knowledge of and expertise in HUB activity;
- (12) a chief executive officer or chief financial officer of a large non-HUB business entity that either:
 - (a) sells goods or services to the State, or
 - (b) provides construction or repair work for State buildings.

c. Each agency head shall designate from his or her staff a HUBs Coordinator who will act as the liaison between the HUBs Office and the respective agency.

d. The HUBs Advisory Council shall meet on a semiannual basis or more frequently at the call of the Secretary of Administration.

Section 5. State Contracts

Each agency should strive to increase the total amount of goods and services acquired by it from HUB vendors, whether directly as principal contractors or indirectly as subcontractors or otherwise. It is expected that at least eight percent, by dollar amount, of the State's purchases of goods and services during fiscal year 1999-2000 and at least ten percent during fiscal year 2000-2001 will be derived from HUB vendors.

The HUBs Office shall assist each agency in developing a plan and providing technical assistance to reach the set objectives related to the purchase of goods and services.

The State Purchasing Officer, the Director of the State Construction Office and the Director of the State Property Office shall continue to implement guidelines and procedures that ensure that the State's contracts contain specific requirements that compel contractors doing business with the State to comply with federal Equal Employment Opportunity requirements or their equivalent.

Section 6. Prior Orders

Executive Order No. 77 executed by former Governor James G. Martin is abolished and superseded by this Order. All prior Executive Orders or portions of Executive Orders inconsistent herewith are hereby rescinded.

This order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 20th day of

April, 1999.



James B. Hunt Jr.
James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 151
AMENDING EXECUTIVE ORDER NO. 149
CLEAN NC 2000 BOARD

By the authority vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Amendment of Executive Order Number 149

Section 2 of Executive Order Number 149 is hereby replaced by the following:

The Board shall consist of at least 31 members. A minimum of twenty members shall be appointed by, and shall serve at the pleasure of, the Governor. Members appointed by the Governor shall be drawn from all geographic areas of North Carolina, shall reflect North Carolina's diverse population, and shall be representative of government, business and industry, community and civic organizations, and education. Of these members, one member shall be a citizen under the age of twenty-one.

In addition to the appointed members noted above, the following eleven individuals, or their respective designees, shall serve as ex-officio members:

- a. Commissioner of the North Carolina Department of Agriculture and Consumer Services;
- b. Superintendent of the North Carolina Department of Public Instruction;
- c. Secretary of the North Carolina Department of Administration;
- d. Secretary of the North Carolina Department of Commerce;
- e. Secretary of the North Carolina Department of Correction;
- f. Secretary of the North Carolina Department of Crime Control and Public Safety;

- g. Secretary of the North Carolina Department of Cultural Resources;
- h. Secretary of the North Carolina Department of Environment and Natural Resources;
- i. Secretary of the North Carolina Department of Transportation;
- j. President of the North Carolina Association of County Commissioners;
- and,
- k. President of the North Carolina League of Municipalities.

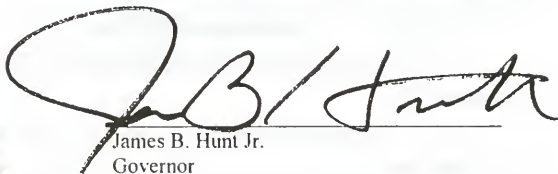
Section 2. Effect on Executive Order Number 149

Subject to the amendment herein, all other provisions of Executive Order No. 149 shall remain in full force and effect.

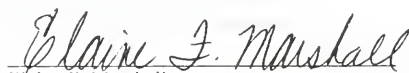
Section 3. Effective Date

This Order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, this 17th day of May, 1999.


James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 152
ADVISORY COMMITTEE ON AGRICULTURE

WHEREAS, agriculture is a major sector in the economy of our State; and

WHEREAS, State policy on agriculture as set by the Governor should be developed with the advice of representatives of agriculture.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Committee and Membership

- a. There is hereby established the Advisory Committee on Agriculture ("Committee").
- b. The Committee shall consist of at least 15 members who shall be appointed by the Governor. The Governor shall appoint a Chair and Vice-Chair of the Committee.
- c. Each member shall serve at the pleasure of the Governor.
- d. Meetings may be called by the Governor or the Chair, and shall be held at least quarterly.

Section 2. Duties

The Committee shall have the following functions and duties:

- a. to advise the Governor concerning his policies related to agriculture;
- b. to provide the Governor timely and relevant information that will assist him in formulating and implementing his agricultural policies;
- c. to recommend policies and programs to the Governor that advance the cause of agriculture in the State;

- d. to assist the Governor in heightening citizen awareness of the past, present, and future importance of agriculture in the State; and
- e. to undertake such other functions and duties as may be assigned by the Governor.


Section 3. Administration

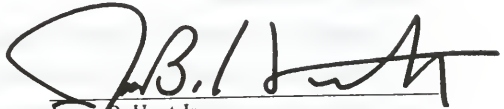
a. The Governor's Office shall provide such clerical and other support services as may be required by the Committee.

b. Members of the Committee shall serve on a voluntary basis without compensation of any sort, including travel or subsistence allowable under state law.


This order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, this 21st day of May, 1999.




James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 153 PERSIAN GULF WAR MEMORIAL COMMISSION

By the power vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment and Membership

There is hereby established the Persian Gulf War Memorial Commission (the Commission) which shall be the successor entity to the Persian Gulf War Memorial Commission created by Executive Order Number 91. The Commission shall be composed of the following members:

- A. Two (2) individuals appointed by the Governor upon the recommendation of the Speaker of the North Carolina House of Representatives;
- B. Two (2) individuals appointed by the Governor upon the recommendation of the President Pro Tempore of the North Carolina Senate; and,
- C. Five (5) individuals appointed by the Governor, including one representative of the North Carolina Desert Storm Memorial Foundation.

In addition to those identified above, the following shall serve as non-voting ex officio members of the Commission:

- D. Members of the Veterans' Affairs Commission Advisory Committee;
- E. One (1) representative of the North Carolina Department of Cultural Resources, appointed by the Governor;

- F. One (1) representative of the North Carolina Capital Planning Commission, appointed by the Governor; and,
- G. One (1) representative of the Division of Veterans Affairs of the North Carolina Department of Administration, appointed by the Governor.

Those individuals who were the last serving members of the Persian Gulf War Memorial Commission under Executive Order Number 91 shall serve on the Commission created hereby, in the positions identified above. Members shall serve at the will of the Governor and until this Executive Order terminates. The Governor shall appoint a Chair from among the voting members. The Commission shall meet at the call of the Chair.

Section 2. Purpose

- A. The Commission shall cause to be created on the Halifax Street Mall, located and designed in a manner which meets the approval of the North Carolina Historical Commission and the North Carolina Capital Planning Commission, a monument to those who served in the Persian Gulf War.
- B. Subject to the availability of funds to the Commission, any contracts necessary to locate, design, construct and erect the monument may be entered into on behalf of the State by the Division of Veterans Affairs of the North Carolina Department of Administration in the same manner as State contracts generally. No such contract shall pledge the full faith and credit of the State. The Commission shall have final approval of the design of the monument.

Section 3. Administration

Administrative support for the Commission shall be provided by the Division of Veterans Affairs of the North Carolina Department of Administration. The Division shall establish a Persian Gulf War Memorial Trust Fund for the design, construction and erection of the memorial. Commission members may be paid necessary travel and subsistence allowance, subject to the availability of funds, in accordance with State law and procedure.

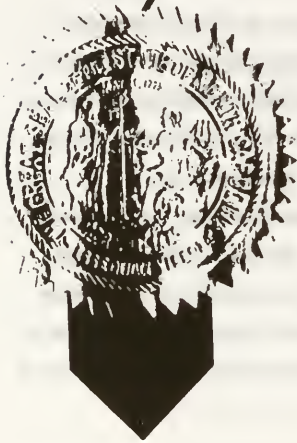
Section 4. Effective Date of this Order and Rescission of Prior Orders

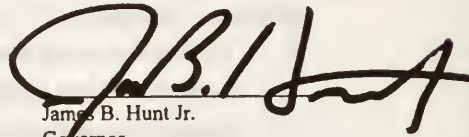
This order is effective immediately and shall remain in effect until a Persian Gulf War Memorial is erected and all purposes of this order are fully satisfied.

Executive Order Number 91 and all other executive orders primarily involving the Persian Gulf War Memorial Commission are hereby rescinded.

All files, records, and related documentation of the Persian Gulf War Memorial Commission under Executive Order Number 91 shall be transferred to the successor Commission created by this order.

Done in the Capital City of Raleigh, North Carolina, this 28th day of May, 1999.




James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 154
AMENDING EXECUTIVE ORDER NO. 48
CONCERNING THE STATE COMMISSION ON NATIONAL AND
COMMUNITY SERVICE

By the power vested in me as Governor by the laws and Constitution of North Carolina, IT IS ORDERED:

Section 1. Amendment of Executive Order No. 48

Executive Order No. 48, which established the North Carolina Commission on National and Community Service, is amended as follows:

- a. The Commission's name is changed to "North Carolina Commission on Volunteerism and Community Service."
- b. All language regarding the Standing Committee on Youth Voice is hereby rescinded, as the Committee no longer exists.
- c. Section 2, Part B, Subpart (8) is amended to read as follows:
 "At least two Commission members shall be individuals between the ages of 16 and 25 who are service providers or recipients in a volunteer or service program."
- d. Section 2, Part B, is amended by adding a Subpart (10), as follows:
 "(10) The Director of the Governor's Office of Citizen and Community Services [referred to as "Governor's Office of Citizen Affairs" in Executive Order No. 48] and the Director of the Department of Public Instruction's Learn and Serve School-Based Program shall serve as non-voting ex-officio members."

e. The last sentence of the first paragraph of Section 5 is amended to read as follows:

"Standing Committees of the Commission may include the following, but Committees may be added, abolished, or consolidated by the Commission as its needs dictate:"

Section 2. Effect on Executive Order No. 48

Except as amended herein, all provisions of Executive Order No. 48 shall remain in full force and effect. In addition to the foregoing, Executive Order No. 48, as amended, is hereby extended to December 31, 2000.

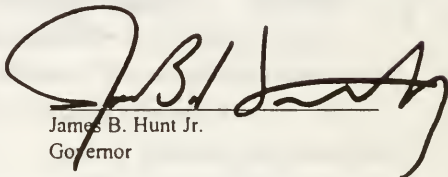
Section 3. Effective Date

This executive order is effective immediately.

Done in the Capital City of Raleigh, North Carolina, this the 14th day of

July, 1999.




James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 155 STATE OF NORTH CAROLINA PILOT TELEWORKING PROJECT

WHEREAS, more than half of North Carolina's residents live in counties facing stricter pollution controls under new federal clean air standards in the next few years; and

WHEREAS, under the old rules, no counties in North Carolina have violated the ozone standard since 1990, meeting the new ozone standard will be a significant challenge for citizens of North Carolina; and

WHEREAS, the majority of the carbon monoxide, ozone, and particulate pollution comes from automobile use; and

WHEREAS, the State must demonstrate leadership in reducing ground-level ozone and motor vehicles emissions through its own policies and the actions of its agencies and employees; and

WHEREAS, teleworking, a management option where selected employees work from their homes instead of driving to the traditional office, could be an essential part of a plan to control the growth in vehicle miles traveled and, as a result, reduce vehicle emissions; and

WHEREAS, teleworking has the potential to be a valuable tool in our Ozone Action Days Program and overall ozone control strategy; and

WHEREAS, teleworking programs in other states have documented not only reductions in air pollution emitted and gasoline consumed, but also increases in employee productivity and morale due to an improved work environment; and

WHEREAS, the Office of the State Auditor and the Office of State Personnel (OSP) have thoroughly researched the feasibility of implementing a

telework/telecommuting program and have recommended that criteria be established for a statewide teleworking program.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Establishment

The State of North Carolina Pilot Teleworking Program (hereinafter, the "Program") is hereby established to identify and measure the benefits derived from teleworking and to establish and test guidelines to ensure statewide consistency among agencies for common issues involved with the implementation of teleworking programs statewide. The Program will identify what does and does not work for agencies prior to a larger scale implementation of a teleworking work option.

Section 2. Role of Partnership

The Pilot Teleworking Project is a partnership between OSP, the Air Quality Division of the Department of Environment and Natural Resources, the Energy Division of the Department of Commerce, and the Department of Transportation. The lead agency shall be OSP. The role of OSP is to develop a teleworking policy and process for the pilots, from selection of pilot organizations and participants through training and evaluation of the pilot project. The Air Quality Division, the Energy Division and the Department of Transportation shall support OSP in this effort with research, technical and contractual support to validate cost/benefit analysis, processes, procedures, and future implementation.

Section 3. Policy

The State of North Carolina Pilot Teleworking Program establishes interim guidelines for teleworking projects that are part of the pilot programs established under the auspices of the Office of State Personnel. This policy is not intended to have any effect on any existing telecommuting or teleworking activities in state agencies and will be reviewed at the conclusion of the pilots. The pilot projects, which are established under this interim policy, are designed so that a reasoned determination can be made as to the potential benefits of teleworking within North Carolina State government.

Section 4. Covered Employees

This policy applies to approved pilot projects only. Its provisions apply to employees who telework as part of such a pilot project and to the supervisors and managers who assign and review work for those employees.

Section 5. State Teleworking Advisory Committee

- a. Creation and Membership. The State Teleworking Advisory Committee is hereby created. The State Personnel Director shall appoint the committee members. The Committee shall have representation from policy areas and participating agencies. Each member shall serve a term of two years.
- b. Duties. The State Teleworking Advisory Committee shall assist the Office of State Personnel with the development of the State Teleworking Pilot Program, review its progress and make recommendations to the State Personnel Director with respect to continuation of teleworking in North Carolina State government.

Section 6. Duties of the Office of State Personnel

The Office of State Personnel will administer the State of North Carolina Pilot Teleworking Program. In carrying out this duty, OSP shall:

- a. Provide coordination for the pilot programs;
- b. Provide staff to the State Teleworking Advisory Committee;
- c. Administer or contract the orientation program for agency coordinators;
- d. Administer or contract program to train agency coordinators;
- e. Review and approve any reports on the teleworking pilot programs; and,
- f. Compile, analyze, and report pilot results.

Section 7. Duties of Each Agency

Each agency shall:

- a. Establish agency policies and procedures in conformance with the guidelines and procedures established by OSP and define teleworking jobs/tasks. Each agency participating in a pilot must

identify jobs that are proposed for inclusion in the pilot and be responsible for providing documentation, evaluation, and analysis to support the selection of these jobs.

- b. Establish expected results. Each agency shall establish measurable performance standards which are results-oriented and which describe quantity and quality of work.
- c. Select a Teleworking Coordinator. Each participating agency shall select an Agency Teleworking Coordinator to be responsible for overall program organization and analysis.
- d. Identify selection criteria for employees. Each agency has the authority to determine which employees under its supervision meet the agency standard for selection.
- e. Identify selection criteria for supervisors. Each agency has the authority to determine which supervisors meet the agency standard for selection.
- f. Orient and train teleworkers and supervisors. All participants in a teleworking pilot shall attend orientation and training sessions regarding this program.
- g. Establish general policies/guidelines such as work hours, equipment, furniture, etc. Each agency shall develop a policy or set of guidelines, which are reflective of agency-specific policies, and include them in addition to the State policies which are not changeable.
- h. Require employees and supervisors to sign teleworking agreements. All teleworking relationships shall have a formal written Teleworking Agreement.

Section 8. Duties of the Employee

In addition to the selection criteria, each employee participating in a teleworking pilot under this Executive Order shall agree to clear and measure performance standards, attend training, sign and abide by a Teleworking Agreement and participate in surveys and focus groups.

Section 9. Duties of The Supervisor

In addition to the selection criteria, each supervisor participating in a teleworking pilot under this Executive Order shall attend orientation sessions for managers and supervisors, establish clear and measurable performance standards, attend training sessions, sign and abide by a Teleworking Agreement, and participate in surveys, focus groups, and pilot evaluations.

Section 10. Teleworking Agreement

All teleworking relationships shall have a formal, written Teleworking Agreement. The agreement shall include and address all policy areas and shall be signed by the teleworker, supervisor, and manager.

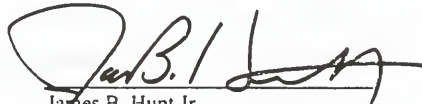
Section 11. Cancellation of Teleworking Agreement

Due to the voluntary nature of the pilot program, teleworkers and/or management have the right to terminate the Teleworking Agreement at any time. Although teleworking is not an employee entitlement or right, termination of employees from the program must be done in writing and with appropriate notice except in emergency situations. Termination of a Teleworking Agreement by management is not a grievable issue under personnel policies. An employee who terminates an agreement cannot be subjected to disciplinary action.

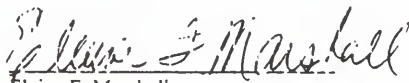
This Order is effective immediately and shall remain in effect until terminated by subsequent executive order.

Done in the Capital City of Raleigh, North Carolina, this the 20th day of

July, 1999.


James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 156
STATE GOVERNMENT ENVIRONMENTAL SUSTAINABILITY,
REDUCTION OF SOLID WASTE, AND
PROCUREMENT OF ENVIRONMENTALLY PREFERABLE PRODUCTS

WHEREAS, the natural resources of the State of North Carolina are the common property of all the people and the State, as trustee of these limited resources, shall preserve them for the benefit of all the people, including future generations; and

WHEREAS, the growth of North Carolina's economy and the quality of life, health, and safety of its citizens are dependent on the careful stewardship of natural resources and protection of the environment; and

WHEREAS, the daily activities and routine operations of the State have a significant impact on the quality of North Carolina's environment and use of its natural resources; and

WHEREAS, the State is a highly visible model for North Carolina's citizens, businesses, industries, and local governments; and

WHEREAS, the State can demonstrate leadership by incorporating environmentally sustainable practices into its operations that preserve natural resources, conserve energy, eliminate waste and emissions, and lessen overall environmental impact; and

WHEREAS, source reduction, reuse, and recycling constitute a key component of environmental sustainability directed at achieving the State's solid waste reduction goal of 40% by the year 2001; and

WHEREAS, the State constitutes a large consumer of goods and services, which, in the course of their manufacture, use, and disposition impact the quality of the environment; and

WHEREAS, the procurement of environmentally sound goods and services by the State can serve to protect health and safety, reduce energy consumption, conserve natural resources, prevent pollution, and promote markets for recyclable materials.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Purpose

This Executive Order shall promote all state agencies to maximize their efforts to develop and implement environmentally sustainable policies and practices. Specifically, agencies shall strive to:

- a. consider and minimize the environmental impacts associated with agency land use and acquisition, construction, facility management, and employee transportation;
- b. reduce and recycle material recoverable from solid waste originating at their facilities and from the construction and renovation of new facilities;
- c. procure goods and services that have a lesser or reduced effect on human health and the environment, including products made wholly or in part from recycled materials; and,
- d. encourage and promote conservation of energy through reducing wasteful, inefficient or uneconomical uses of energy resources.

Section 2. Responsibilities of State Agencies

a. Each state agency shall be responsible for implementing programs to make its operations environmentally sustainable, including, but not limited to, programs to reduce and recycle solid wastes and procure environmentally preferable goods and services. Such programs shall be consistent with and as comprehensive as described in this Order.

b. Each agency shall designate an Environmental Sustainability Officer to direct sustainability activities. Agencies shall also designate one or more individuals to coordinate and oversee its waste reduction, recycling, and other environmental protection programs, and to serve as a liaison with the Division of Pollution Prevention and

Environmental Assistance of the North Carolina Department of Environment and Natural Resources.

c. The Division of Pollution Prevention and Environmental Assistance and the Division of Energy of the North Carolina Department of Commerce shall provide technical assistance, education, and training to state agencies on these matters, and shall serve as a central point of information and coordination for all state agency environmental sustainability efforts.

d. The Divisions of Facility Management, State Construction, State Property, and Motor Fleet Management of the North Carolina Department of Administration shall facilitate state agency environmental sustainability efforts as part of their regular functions, which include but are not limited to: overseeing contracts for waste hauling, housekeeping services, landscaping, and facility maintenance; site leasing; capital construction projects; and fleet transportation.

e. As provided in this Order, the Division of Purchase and Contract of the Department of Administration shall aggressively explore opportunities for procuring goods and services that have a lesser or reduced effect on human health and the environment and shall actively promote the purchase of environmentally preferable products by state agencies and others eligible to purchase items from state contracts.

Section 3. Environmentally Sustainable Operations and Practices

State agency environmental sustainability efforts shall focus primarily on the operations of state-owned facilities and leased spaces. Agencies shall assess the impacts of facility daily operations, management, and capital improvement projects as they pertain to health and safety, environmental quality, land use, and resource conservation.

a. Capital improvements

All state agencies shall seek opportunities to reduce environmental impacts associated with capital improvements throughout project planning, site and building design, and construction. Agencies shall, to the extent feasible and practicable, implement project initiatives or modifications that result in energy efficiency, water conservation, pollution prevention, solid waste reduction, and land preservation during the construction and operation of agency facilities.

b. Facilities management

State agencies shall seek to integrate into the daily operations and management of state-owned and leased facilities, practices that enhance health and safety, reduce consumption of energy and fuels, conserve water, minimize emissions, and reduce solid and hazardous wastes. Agencies shall give consideration to these practices, to the extent feasible and practicable, as criteria for entering into lease agreements or contracts for maintenance and landscaping services.

c. State Vehicle Use and Employee Transportation

(1) To reduce air pollution, particularly ground-level ozone, resulting from state fleet vehicle usage, it shall be the goal of the State that on and after January 1, 2004, at least seventy-five percent (75%) of the new or replacement light duty cars and trucks purchased by state agencies will be alternative-fueled vehicles or low emission vehicles. The Departments of Administration, Transportation, and Environment and Natural Resources, shall jointly develop a plan to achieve this goal and to fuel and maintain these vehicles.

(2) To the extent feasible, and within guidelines established jointly by the Office of State Personnel, and the Departments Administration, Transportation, and Environment and Natural Resources, state agencies shall implement measures to reduce the number of vehicle miles driven by state employees in personal and state fleet vehicles resulting from job-related travel including commuting to and from work. These measures may include carpooling, vanpooling, public transportation incentives, flex-time scheduling to avoid travel during peak traffic, telecommuting, teleconferencing, and other appropriate strategies.

Section 4. Source Reduction and Recycling of Solid Wastes

a. Source reduction

To encourage reduction of waste at its source, all state agencies shall review their operations to determine where solid waste can be reduced at its sources of generation. Specific measures state agencies shall employ to reduce waste at the source include but are not limited to those identified in this Section.

(1) Reduction of office paper waste

(a) Printing and photocopying

State agencies shall avoid unnecessary printing or photocopying of printed materials, and shall require two-sided copying on all documents when feasible and practicable. To the extent feasible, all new and re-manufactured photocopy machines and laser printers purchased shall have duplexing capabilities.

(b) Use of electronic communication

State agencies shall, to the extent feasible, use electronic media such as voice mail, e-mail, and the Internet to circulate or distribute routine announcements, memoranda, documents, reports, forms, manuals, and publications.

(2) Product necessity, durability, packaging, and recyclability

State agencies shall discourage the use of disposable products where reusable products are available and economically viable for use. Furthermore, state agencies shall assess their waste generation with regard to purchasing decisions and make every attempt to purchase items only when needed and in amounts that are not excessive. When purchases are necessary, state agencies shall, to the extent feasible and practicable, acquire items that are more durable, have minimal packaging, or are readily recyclable when discarded.

b. Collection programs for recyclable materials

(1) As set forth in North Carolina General Statute § 130A-309.14, all state agencies shall ensure that employees have access to containers for recycling (at a minimum) aluminum cans, high-grade office paper, and corrugated cardboard. All state employees are required to separate identified recyclable materials generated in the course of agency operations and place them in the appropriate recycling containers. The provisions of this section shall not apply in those situations where the agency head makes a written determination that their implementation is not feasible.

(2) State agencies facilities that routinely host the general public, such as highway rest areas, state parks and recreation areas, employment security offices, state historic sites, etc., shall implement programs for the collection of recyclable materials discarded by the public at all such locations (e.g., aluminum, glass, and plastic beverage containers) when feasible and practicable. State agencies shall work closely with the appropriate local government agencies when developing and implementing these recycling programs.

(3) Agencies that operate or contract for the operation of food service establishments, such as snack bars, cafeterias, dining halls, etc., are encouraged to implement programs to recover and recycle leftover food when practicable and feasible.

c. Education of agency employees

It shall be the duty of each state agency to educate and encourage employee participation in agency waste reduction and recycling programs. The Division of Pollution Prevention and Environmental Assistance shall assist agencies in developing and implementing educational programs. Each agency shall establish a network of assistant coordinators to assist the lead coordinator with carrying out this responsibility. The assistant coordinators shall disseminate information about recycling and waste reduction policies and procedures; monitor participation; and report any problems, suggestions, or other feedback to the agency's designated lead coordinator.

Section 5. Purchase and Use of Environmentally Preferable Products

As a component of their environmental sustainability efforts and to help develop markets for recyclable materials, state agencies shall procure and use environmentally preferable goods and services, including products made wholly or in part from recycled materials, whenever feasible and practicable. Environmentally preferable products have a lesser or reduced effect on human health and the environment in their manufacture, use, and disposal when compared with other products that serve the same purpose. Agencies shall give consideration to environmentally preferable products that are more energy efficient, less toxic, less polluting, and which generate less waste overall.

a. Purchases of environmentally preferable and recycled-content products

(1) In cooperation with the Division of Pollution Prevention and Environmental Assistance, the Division of Purchase and Contract shall make every effort to identify environmentally preferable goods and services and products made from recycled materials that meet appropriate standards for use by state agencies. When environmentally preferable and recycled-content products are offered that are comparable in quality, availability, and price to products not having recycled content or similar environmental attributes, term contracts shall carry only the environmentally preferable products.

(2) To enable agencies to readily identify the availability of these products, term contracts shall be written in a format that prominently identifies environmentally preferable and recycled-content products, and these products shall be listed in conjunction with any comparable products not having recycled content or similar environmental attributes. The Division of Purchase and Contract shall prepare an electronic listing of all environmentally preferable and recycled-content products available on state contracts and make it available to all state agency purchasers.

(3) State agencies that have delegated purchasing authority shall develop product specifications to encourage vendors to offer environmentally preferable and recycled-content products. Specifications shall be written to ensure that they do not contain restrictive language or other barriers to purchasing environmentally preferable or recycled-content products, unless such specifications are necessary to protect public health, safety, or welfare.

(4) All electronic office equipment, including but not limited to, computers, monitors, printers, scanners, photocopy machines, facsimile machines, and other such equipment purchased by state agencies shall be Energy Star® compliant.

(5) State agencies shall give priority consideration to the purchase of re-manufactured and used equipment, including, but not limited to, such equipment as photocopiers and other office equipment.

(6) State agencies shall give priority consideration to the purchase of fleet vehicles that use less-polluting fuels and that have the highest available miles-per-gallon rating.

b. Purchases of recycled paper

(1) State agencies are directed to purchase and use recycled paper for all letterhead stationery, reports, memoranda, and other documents when feasible and practicable. All new and re-manufactured photocopy machines and laser printers purchased shall have the ability to use xerographic paper having at least 50% recycled content, 30% of which should be post-consumer content.

(2) State agencies shall attempt to meet the goal that, as of Fiscal Year 2003-01, 100% of the total dollar value of expenditures for paper and paper products be toward purchases of paper and paper products with recycled content. In addition, state

agencies shall attempt, to the extent feasible and practicable, to purchase recycled paper and paper products with the highest percentage of post consumer content.

c. Guidelines and criteria

The Division of Purchase and Contract in cooperation with the Division of Pollution Prevention and Environmental Assistance shall develop criteria for determining the environmental preferability of goods and services and establish minimum content standards for recycled-content products purchased by state agencies.

Section 6. Reporting

a. State agency annual reports on solid waste reduction and procurement of recycled products

By the first of October annually, each state agency shall report to the Division of Pollution Prevention and Environmental Assistance for the previous fiscal year the following information, at a minimum: activities or programs implemented to reduce the amount of solid waste generated by the agency; quantities and types of materials collected for recycling by the agency; and the dollar amounts and types of recycled products purchased.

b. Annual progress report to the Governor

The Division of Pollution Prevention and Environmental Assistance, in conjunction with the Department of Administration, shall provide guidance to agencies in preparing their annual reports. The Division of Pollution Prevention and Environmental Assistance shall compile the agency reports and provide to the Governor an annual progress report on state agency efforts to reduce waste at the source, collect recyclable materials, and procure recycled products.

c. Tracking recycled products procurement

The Division of Purchase and Contract shall review its sales report procedures and determine any changes needed to facilitate tracking of environmentally preferable and recycled products purchased by state agencies and others from term contracts

Section 7. Effect of Other Executive Orders

Executive Order Number 8 is hereby rescinded. All other Executive Orders or portions of Executive Orders inconsistent herewith are hereby rescinded.

Section 8. Effective Date

This Executive Order is effective immediately and shall remain in effect until rescinded.

Done in the Capital City of Raleigh, North Carolina, this the 20th day of

July, 1999.



James B. Hunt Jr.
Governor

ATTEST:

Elaine F. Marshall
Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 157 MENTORING COUNCIL

WHEREAS, all children should have a positive adult role model to help them succeed in school and in life; and,

WHEREAS, too many young people in North Carolina still fail to reach their potential because of family issues, crime and drugs, teen pregnancy, and educational failure; and,

WHEREAS, North Carolina supports America's Promise and accepts the goals and message as crucial; and,

WHEREAS, North Carolina knows that mentoring is a positive and important way to influence the lives of children by helping them stay away from crime and drugs and form goals like attending college; and,

WHEREAS, mentoring is a key component of the juvenile crime prevention strategy; and,

WHEREAS, the NC Promise initiative has mobilized unprecedented numbers of volunteers for mentoring programs; and,

WHEREAS, existing mentoring programs have been shown to reduce juvenile crime, increase school attendance, increase academic performance and help young people develop positive attitudes; and,

WHEREAS, North Carolina can do even more to assure the success of these children; and,

WHEREAS, Governor Hunt has pledged that 40,000 children will receive mentors by the end of 2000; and,

WHEREAS, North Carolina has tremendous resources to be organized and mobilized to encourage adults to become mentors; and,

WHEREAS, North Carolina has committed to being First In America in education.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Governor's Council on Mentoring Established

The Governor's Council on Mentoring is hereby established. The Council shall be located in the Office of the Governor for organizational, budgetary, and administrative purposes.

The Council shall consist of 32 members with other members appointed as appropriate and shall reflect the geographic and cultural diversity of the state. The membership may include:

Representatives from the business community;

Representatives from the faith community;

Representatives from colleges/universities, community colleges;

Representatives from military or law enforcement;

Representatives from the student population;

Representatives from school administrators;

Representatives from civic groups;

Representatives from state government;

Representatives from local government;

Representatives from the mentoring program leaders;

At Large members.

The Governor may also appoint non-voting ex officio members of the Council as necessary.

Section 2. Chair, Vice Chair, and Honorary Co-Chairs

The Governor shall appoint a Chair from the membership of the Council, and may name such honorary co-chairs as he may deem necessary. The Council shall elect from its members a Vice Chair and other officers as are determined necessary.

Section 3. Duties and Responsibilities

The Council shall raise public awareness and recruit mentors to meet the goal of providing mentors to 40,000 youth by the end of 2000 by:

Using its position to encourage and galvanize volunteers around mentoring;

Encouraging colleagues/members to recruit mentors from their organizations and communities;

Developing innovative initiatives to get more North Carolinians involved in mentoring;

Helping to increase the organizational capacity of mentoring organizations;

Helping to coordinate between state and local mentoring programs;

Providing staff to help with program development so that new programs can be developed and existing programs expanded;

Developing training programs for mentors so that they can be well prepared to help North Carolina's youth;

Providing staff for training mentors;

Providing information and assistance as requested by companies, faith communities, schools, and other mentor suppliers;

Making specific recommendations to the Governor on how to expand and improve mentoring initiatives; and,

Aligning efforts to support statewide initiatives such as First In America in education.

Section 4. Council Meetings

The Council shall meet quarterly and at the call of the Chair. The Chair shall set the agenda of the Council's meetings. The Council may establish such committees or working groups as are necessary to assist in performing its duties and carrying out the Council's responsibilities.

Section 5. Per Diem, Travel, and Subsistence

Members of the Council shall serve without compensation but, subject to the availability of funds, shall be eligible for per diem, travel, and subsistence as provided by North Carolina law and policy.

Section 6. Reporting Requirements

The Council shall present an annual report of its findings and recommendations to the Governor. The Council's first report shall be presented no later than December 31, 1999.

Section 7. Staff Support


Support staff for the Council shall be provided by the Director of NC Promise.

Section 8. Effective Date

This order is effective immediately, and shall remain in effect until rescinded by the Governor.

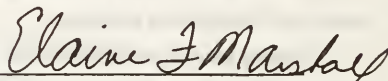
Done in the Capital City of Raleigh, North Carolina, this the 13th day of August, 1999.





James B. Hunt Jr.
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 158 EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE DENNIS

WHEREAS, I have proclaimed that a state of emergency and threatened disaster exists in North Carolina due to Hurricane Dennis; and

WHEREAS, the North Carolina Department of Transportation has declared a State emergency justifying an exemption from 49 C.F.R. 390-397 (Federal Motor Carrier Safety Regulations); and

WHEREAS, under the provisions of N.C.G.S. 166A-4(3) and 166A-6(c)(3), the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services;

WHEREAS, with the concurrence of the Council of State, I have found that if utility vehicles bearing equipment and supplies to relieve our hurricane-stricken counties must adhere to the registration requirements of N.C.G.S. 20-86 and 20-382, fuel tax requirements of N.C.G.S. 105-449.47 citizens in those counties will likely suffer losses and, therefore, invoke an imminent threat of widespread damage within the meaning of N.C.G.S. 166A-4(3);

THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of this State, and with the concurrence of the Council of State, IT IS ORDERED:

Section 1. The Division of Motor Vehicles shall waive certain registration requirements and penalties therefore arising under N.C.G.S. 20-86, 20-382 and 105-449.47 and 105-449.49 for utility vehicles transporting equipment and supplies along our

highways to North Carolina's hurricane-stricken counties. Waivers from registration requirements apply only to those exemptions specifically listed under Sections 2 and 3.

Section 2.

- (A) Upon request, qualified exempted vehicles will be required to produce identification sufficient to establish that its load will be used for restoration efforts associated with Hurricane Dennis.
- (B) The \$50.00 fee listed in >C.G.S. 105-449.49 for a temporary trip permit is waived for the vehicles described above. The penalties described in N.C.G.S. 20-382.2 concerning insurance registration are waived also. Finally, no quarterly fuel tax is required because the exception in N.C.G.S. 105-449.45(a)(1) applies.
- (C) The vehicles will be allowed on all routes designated by the North Carolina Department of Transportation.
- (D) This order shall not be in effect on bridges posted pursuant to N.C.G.S. 136-72.
- (E) This order does not allow operation above the statutory gross and axle weight limits.

Section 3. Vehicles described in Section 1 which are non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the spirit of the exemptions identified by this Executive Order.

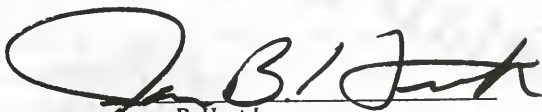
Section 4. The waiver of regulations under 49 C.F.R. 390-397 (Federal Motor Carrier Safety Regulations) do not apply to the CDL and Insurance Requirements.

Section 5. The North Carolina Department of Transportation shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

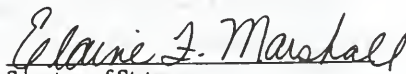
This Executive Order shall be effective immediately and shall remain in effect for 30 days.

Executed in the Capital City of Raleigh, North Carolina this 30th day
of August, 1999.




James B. Hunt Jr.
Governor

ATTEST:


Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 159 EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE FLOYD

WHEREAS, I have proclaimed that a state of emergency and threatened disaster exists in North Carolina due to Hurricane Floyd; and

WHEREAS, the North Carolina Department of Transportation has declared a State emergency justifying an exemption from 49 C.F.R. 390-397 (Federal Motor Carrier Safety Regulations); and

WHEREAS, under the provisions of N.C.G.S. 166A-4(3) and 166A-6(c)(3), the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that if vehicles bearing food, equipment, and supplies to relieve our hurricane-stricken counties must adhere to the registration requirements of N.C.G.S. 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. 105-449.47, and the size and weight requirements of N.C.G.S. 20-116 and N.C.G.S. 20-118 citizens in those counties will likely suffer losses and, therefore, invoke an imminent threat of widespread damage within the meaning of N.C.G.S. 166A-4(3);

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, and with the concurrence of the Council of State, IT IS ORDERED:

Section 1. The Division of Motor Vehicles shall waive certain size and weight restrictions and penalties therefore arising under N.C.G.S. 20-116 and N.C.G.S. 20-118, and certain registration requirements and penalties therefore arising under

N.C.G.S. 20-86.1, 20-382, 105-449.47, 105-449.49 for vehicles transporting food, equipment, and supplies along our highways to North Carolina's hurricane-stricken counties.

Section 2. Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- (A) When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- (B) When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- (C) When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.

Section 3. Vehicles referenced under section 1 shall be exempt from the following registration requirements:

- (A) The \$50.00 fee listed in N.C.G.S. 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. 105-449.45(a)(1) applies.
- (B) The registration requirement under N.C.G.S. 20-382 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance.
- (C) Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the spirit of the exemptions identified by this Executive Order.

Section 4. The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. 136-72.

Section 5. The waiver of regulations under 49 C.F.R. 390-397 (Federal Motor Carrier Safety Regulations) does not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 15 days or for the duration of the emergency, whichever is less.

Section 6. The North Carolina Department of Transportation shall enforce the conditions set forth in Sections 1, 2, and 3 in a manner which would best accomplish the implementation of this rule without endangering motorists in North Carolina.

Section 7. Upon request, exempted vehicles will be required to produce identification sufficient to establish that its load will be used for emergency relief efforts associated with Hurricane Floyd.

This Executive Order is effective immediately and shall remain in effect for thirty (30) days.

Done in the Capital City of Raleigh, North Carolina this 15th day of September, 1999.



A handwritten signature in dark ink, reading "James B. Hunt Jr.", is positioned above the printed name of the Governor.

James B. Hunt Jr.
Governor

ATTEST:

A handwritten signature in dark ink, reading "Elaine F. Marshall", is positioned above the printed name of the Secretary of State.

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 160

PSYCHOLOGISTS AND SOCIAL WORKERS LICENSED OR CERTIFIED OUT OF STATE PERMITTED TO PROVIDE CRISIS COUNSELING FOR VICTIMS OF HURRICANE FLOYD

WHEREAS, Hurricane Floyd has had a devastating impact on the State of North Carolina; and,

WHEREAS, the American Red Cross is able to provide qualified psychologists and social workers licensed or certified outside the State of North Carolina to assist victims of Hurricane Floyd, and disaster relief workers, with crisis counseling; and,

WHEREAS, the provision of these psychologists and social workers would be of great value to those in need of such services; and,

WHEREAS, the North Carolina General Statutes and the North Carolina Administrative Code impose certain licensure requirements on out of state psychologists and certification requirements on social workers; and,

WHEREAS, to gain the full benefit of the services to be provided, there is a need to temporarily suspend these requirements.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of this State, IT IS ORDERED:

Section 1. Psychologists licensed outside the State of North Carolina provided by the American Red Cross for the provision of crisis counseling to North Carolina victims of Hurricane Floyd, including disaster relief workers, shall be permitted to engage in the practice of psychology in this State, for the limited purposes expressed herein and on a voluntary basis only, for the duration of this Executive Order.

Section 2. Psychologists subject to this Executive Order shall be exempt from the licensure requirements of the North Carolina Psychology Practice Act (North Carolina General Statutes Chapter 90, Article 18A) and any related Administrative Rules within the North Carolina Administrative Code.

Section 3. Social workers licensed outside the State of North Carolina provided by the American Red Cross for the provision of crisis counseling to North Carolina victims of Hurricane Floyd, including disaster relief workers, shall be permitted to provide crisis intervention, problem management, case management, and general counseling, for the limited purposes expressed herein and on a voluntary basis only, for the duration of this Executive Order.

Section 4. Social workers subject to this Executive Order shall be exempt from the certification requirements of the North Carolina Social Worker Certification Act (North Carolina General Statutes Chapter 90B) and any related Administrative Rules within the North Carolina Administrative Code.

This Executive Order is effective immediately and shall remain in effect for thirty days from the date provided below.

Done in the Capital City of Raleigh, North Carolina, this 16th day of September, 1999.



A handwritten signature in dark ink, which appears to read "James B. Hunt Jr.", is positioned above the printed name of the Governor.

James B. Hunt Jr.
Governor

ATTEST:

A handwritten signature in dark ink, which appears to read "Elaine F. Marshall", is positioned above the printed name of the Secretary of State.

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 161
REQUEST FOR MUNICIPALITIES AND COUNTIES
TO PROVIDE MUTUAL AID AND ASSISTANCE
IN HURRICANE FLOYD RELIEF AND RECOVERY EFFORTS

WHEREAS, I have proclaimed that a state of emergency and disaster exists in North Carolina due to Hurricane Floyd; and,

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) permits the use of services, equipment, supplies, facilities, officers and personnel of political subdivisions across the state for emergency management purposes; and,

WHEREAS, the state and all municipalities and counties throughout North Carolina must work together in this time of disaster to aid and assist those in great need of help; and,

WHEREAS, to facilitate a coordinated, effective relief and recovery effort among all municipalities and counties, this order is executed.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

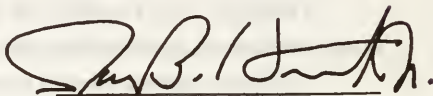
Section 1. All municipalities and counties throughout North Carolina, acting through duly authorized officers and personnel, are requested to apply all readily available officers and personnel, services, equipment, supplies and facilities toward Hurricane Floyd relief and recovery efforts.

Section 2. All municipalities and counties either in need of, or desirous of providing, aid and assistance shall coordinate through the State of North Carolina Division of Emergency Management and county emergency management officials.

Section 3. Those municipalities and counties which provide or receive aid and assistance under this executive order, and the North Carolina Division of Emergency Management, shall be subject to the terms and conditions within the "North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement" (October, 1997 revised version), a copy of which is attached hereto and incorporated herein by reference.

Section 4. This executive order is effective immediately, and shall remain in effect until rescinded.

Done in the Capital City of Raleigh, North Carolina, this the 19th day of September, 1999.



James B. Hunt Jr.

ATTEST:



Elaine F. Marshall
Secretary of State



NORTH CAROLINA STATEWIDE EMERGENCY MANAGEMENT MUTUAL AID AND ASSISTANCE AGREEMENT

Revision – October, 1997

THIS AGREEMENT IS ENTERED INTO BETWEEN THE NORTH CAROLINA DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY, AND ITS DIVISION OF EMERGENCY MANAGEMENT OF THE STATE OF NORTH CAROLINA AND BY EACH OF THE ENTITIES THAT EXECUTES AND ADOPTS THE UNDERSTANDINGS, COMMITMENTS, TERMS, AND CONDITIONS CONTAINED HEREIN:

WHEREAS, the State of North Carolina is geographically vulnerable to a variety of natural disasters;

WHEREAS, Chapter 166A of the North Carolina General Statutes, entitled the North Carolina Emergency Management Act, recognizes this vulnerability and provides that its intended purposes are to:

- (1) Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property;
- (2) Prepare for prompt and efficient rescue, care, and treatment of threatened or affected persons;
- (3) Provide for the rapid and orderly rehabilitation of persons and restoration of property; and
- (4) Provide for cooperation and coordination of activities relating to emergency and disaster mitigation, preparedness, response, and recovery;

WHEREAS, in addition to the State, the Federal Emergency Management Agency (FEMA) has recognized the importance of the concept of coordination between the State and local governments;

WHEREAS, under Chapter 166A and other chapters of the North Carolina General Statutes, entities entering into mutual aid and assistance agreements may include provisions for the furnishing and exchanging of supplies, equipment, facilities, personnel and services; and

WHEREAS, the entities which have chosen to become signatories to this Agreement wish to provide mutual aid and assistance amongst one another at the appropriate times; THEREFORE, pursuant to G.S. 166A-10(b), these entities agree to enter into this Agreement for reciprocal emergency management aid and assistance, with this Agreement embodying the understandings, commitments, terms, and conditions for said aid and assistance, as follows:

Section I. DEFINITIONS

"Agreement" means this document, the North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement.

"Aid and assistance" includes personnel, equipment, facilities, services, supplies, and other resources.

"Authorized Representative" means a party's employee who has been authorized, in writing by that party, to request, to offer, or to otherwise provide assistance under the terms of this Agreement. The list of Authorized Representatives for each party executing this Agreement shall be attached to the executed copy of this Agreement. (In the event of a change in personnel, unless otherwise notified the presumption will be that the successor to that position will be the authorized representative.)

"Disaster" means an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property, resulting from any natural or man-made accidental, military, or paramilitary cause.

"Local Agency" means a county agency charged with coordination of all emergency management activities for its geographical limits pursuant to G.S. 166A-7.

"Party" means a governmental entity which has adopted and executed this Agreement.

"Provider" means the party which has received a request to furnish aid and assistance from another party in need (the "Recipient").

"Recipient" means the party setting forth a request for aid and assistance to another party (the "Provider").

Section II. INITIAL RECOGNITION OF PRINCIPLE BY ALL PARTIES; AGREEMENT PROVIDES NO RIGHT OF ACTION FOR THIRD PARTIES

As this is a reciprocal contract, it is recognized that any party to this Agreement may be requested by another party to be a Provider. It is mutually understood that each party's foremost responsibility is to its own citizens. The provisions of this Agreement shall not be construed to impose an unconditional obligation on any party to this Agreement to provide aid and assistance pursuant to a request from another party. Accordingly, when aid and assistance have been requested, a party may in good faith withhold the resources necessary to provide reasonable and adequate protection for its own community, by deeming itself unavailable to respond and so informing the party setting forth the request.

Given the finite resources of any jurisdiction and the potential for each party to be unavailable for aid and assistance at a given point in time, the parties mutually encourage each other to enlist other entities in mutual aid and assistance efforts and to enter into such agreements accordingly. Concomitantly, the parties fully recognize that there is a highly meritorious reason

for entering into this Agreement, and accordingly shall attempt to render assistance in accordance with the terms of this Agreement to the fullest extent possible.

Pursuant to G.S. 166A-14 and as elaborated upon in Section X of this Agreement, all functions and activities performed under this Agreement are hereby declared to be governmental functions. Functions and activities performed under this Agreement are carried out for the benefit of the general public and not for the benefit of any specific individual or individuals. Accordingly, this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third parties or persons and no third parties or persons shall have any right of action under this Agreement for any cause whatsoever. All immunities provided by law shall be fully applicable as elaborated upon in Section X of this Agreement.

Section III. PROCEDURES FOR REQUESTING ASSISTANCE

Mutual aid and assistance shall not be requested unless the resources available within the stricken area are deemed inadequate by Recipient. When Recipient becomes affected by a disaster and deems its resources inadequate, it may request mutual aid and assistance by communicating the request to Provider, indicating the request is made pursuant to this mutual aid agreement. The request shall be followed as soon as practicable by a written confirmation of that request, including the transmission of a proclamation of local state of emergency under G.S. 166A-8 and Article 36 A of Chapter 14 of the NC General Statutes, and a completed form describing its projected needs in light of the disaster. All requests for mutual aid and assistance shall be transmitted by the party's *Authorized Representative* or to the *Coordinator of the Local Agency* as set forth below.

A. METHOD OF REQUEST FOR MUTUAL AID AND ASSISTANCE: Recipient shall set forth requests by means of one of the two options described as follows:

(i) **REQUESTS ROUTED THROUGH THE RECIPIENT'S LOCAL AGENCY:** Recipient may directly contact the Local Agency, in which case it shall provide the Local Agency with the information in paragraph B of this Section (Section III). The Local Agency shall then contact other parties on behalf of Recipient to coordinate the provision of mutual aid and assistance. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to Section VII of this Agreement.

(ii) **REQUESTS MADE DIRECTLY TO PROVIDER:** Recipient may directly contact Provider's authorized representative, setting forth the information in paragraph B of this Section (Section III). All communications shall be conducted directly between Recipient and Provider. Recipient shall be responsible for the costs and expenses incurred by any Provider in providing aid and assistance pursuant to the provisions of this Agreement as noted in Section VII of this Agreement. Provider and recipient shall be responsible for keeping Local Agencies advised of the status of response activities, in a timely manner.

(iii) *RECORD OF REQUESTS TO BE PROVIDED:* A record of the request for assistance shall be provided by the Recipient to the Director of the Division of Emergency Management in the NC Department of Crime Control and Public Safety, in a timely manner.

B. REQUIRED INFORMATION: Each request for assistance shall be accompanied by the following information, in writing or by any other available means, to the extent known:

1. *Stricken Area and Status:* A general description summarizing the condition of the community (i.e., whether the disaster is imminent, in progress, or has already occurred) and of the damage sustained to date;

2. *Services:* Identification of the service function(s) for which assistance is needed and the particular type of assistance needed;

3. *Infrastructure Systems:* Identification of the type(s) of public infrastructure system for which assistance is needed (water and sewer, storm water systems, streets) and the type of work assistance needed;

4. *Aid and Assistance:* The amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time they will be needed;

Provider's Traveling Employee Needs—Unless otherwise specified by Recipient, it is mutually understood that Recipient will provide for the basic needs of Provider's traveling employees. Recipient shall pay for all reasonable out-of-pocket costs and expenses of Provider's personnel, including without limitation transportation expenses for travel to and from the stricken area. Further, Recipient shall house and feed Provider's personnel at its (Recipient's) sole cost and expense. If Recipient cannot provide such food and/or housing at the disaster area, Recipient shall specify in its request for assistance that self-contained personnel are needed.

5. *Facilities:* The need for sites, structures, or buildings outside Recipient's geographical limits to serve as relief centers or staging areas for incoming emergency goods and services; and

6. *Meeting Time and Place:* An estimated time and a specific place for a representative of Recipient to meet the personnel and resources of any Provider.

C. STATE AND FEDERAL ASSISTANCE: Recipient shall be responsible for coordinating requests for state or federal assistance with its (Recipient's) Local Agency.

Section IV. PROVIDER'S ASSESSMENT OF AVAILABILITY OF RESOURCES AND ABILITY TO RENDER ASSISTANCE

When contacted by the Recipient/Local Agency, Provider's authorized representative shall assess Provider's own local situation in order to determine available personnel, equipment, and other resources. If Provider's authorized representative determines that Provider has available resources, Provider's authorized representative shall so notify the Recipient/Local Agency (whichever communicated the request). Provider shall complete a written acknowledgment, whether on the request form received from Recipient or on another form, regarding the assistance to be rendered (or a rejection of the request) and shall transmit it by the most efficient practical means to the Recipient/Local Agency for a final response. Provider's acknowledgment shall contain the following information:

1. In response to the items contained in the request, a description of the personnel, equipment, and other resources available;
2. The projected length of time such personnel, equipment, and other resources will be available to serve Recipient, particularly if the period is projected to be shorter than one week (as provided in the "Length of Time for Aid and Assistance" section [Section VI] of this Agreement.)
3. The estimated time when the assistance provided will arrive at the location designated by the Authorized Representative of the Requesting Party; and
4. The name of the person(s) to be designated as Provider's supervisory personnel (pursuant to the "Supervision and Control" section [Section V] of this Agreement.)

Where a request has been submitted to the Local Agency, the Local Agency shall notify Recipient's authorized representative and forward the information from Provider. The Recipient/Local Agency shall respond to Provider's written acknowledgment by executing and returning a copy of the form to Provider by the most efficient practical means, maintaining a copy for its file.

Section V. SUPERVISION AND CONTROL

Provider shall designate supervisory personnel amongst its employees sent to render aid and assistance to Recipient. As soon as practicable, Recipient shall assign work tasks to Provider's supervisory personnel, and unless specifically instructed otherwise, Recipient shall have the responsibility for coordinating communications between Provider's supervisory personnel and Recipient. Recipient shall provide necessary credentials to Provider's personnel authorizing them to operate on behalf of Recipient.

Based upon such assignments set forth by Recipient, Provider's supervisory personnel shall:

(1) have the authority to assign work and establish work schedules for Provider's personnel. Further, direct supervision and control of Provider's personnel, equipment, and other resources shall remain with Provider's supervisory personnel. Provider should be prepared to furnish communications equipment sufficient to maintain communications among its respective operating units, and if this is not possible, Provider shall notify Recipient accordingly;

(2) maintain daily personnel time records, material records, and a log of equipment hours;

(3) shall report work progress to Recipient at mutually agreed upon intervals.

Section VI. LENGTH OF TIME FOR AID AND ASSISTANCE; RENEWABILITY; RECALL

Unless otherwise provided, the duration of Provider's assistance shall be for an initial period of seven days, starting from the time of arrival. Thereafter, assistance may be extended in daily or weekly increments as the situation warrants, for a period agreed upon by the authorized representatives of Provider and Recipient.

As noted in Section II of this Agreement, Provider's personnel, equipment, and other resources shall remain subject to recall by Provider to provide for its own citizens if circumstances so warrant. Provider shall make a good faith effort to provide at least twenty-four (24) hours advance notification to Recipient of its (Provider's) intent to terminate mission, unless such notice is not practicable, in which case as much notice as is reasonable under the circumstances shall be provided.

Section VII. REIMBURSEMENTS

Except as otherwise provided below, it is understood that Recipient shall pay to Provider all documented costs and expenses incurred by Provider as a result of extending aid and assistance to Recipient. The terms and conditions governing reimbursement for any assistance provided under this Agreement shall be in accordance with the following provisions, unless otherwise agreed in writing by Recipient and Provider. Recipient shall be ultimately responsible for reimbursement of all eligible expenses. Provider shall submit reimbursement documentation to Recipient on the forms shown in Appendix B.

A. Personnel-- During the period of assistance, Provider shall continue to pay its employees according to its then prevailing ordinances, rules, and regulations. Recipient shall reimburse Provider for all direct and indirect payroll costs and expenses including travel expenses incurred during the period of assistance, including, but not limited to, employee retirement benefits as provided by Generally Accepted Accounting Principles (GAAP). However, as stated in Section IX of this Agreement, Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's personnel under the terms of the North Carolina Workers' Compensation Act (Chapter 97 of the North Carolina General Statutes).

B. Equipment-- Provider shall be reimbursed by Recipient for the use of its equipment during the period of assistance according to either a pre-established local or state hourly rate or according to the actual replacement, operation, and maintenance expenses incurred. For those instances in which costs are reimbursed by the Federal Emergency Management Agency (FEMA), the FEMA-eligible direct costs shall be determined in accordance with 44 C.F.R. 206.228. Provider shall pay for all repairs to its equipment as determined necessary by its on-site supervisor(s) to maintain such equipment in safe and operational condition. At the request of Provider, fuels, miscellaneous supplies, and minor repairs may be provided by Recipient, if practical. The total equipment charges to Recipient shall be reduced by the total value of the fuels, supplies, and repairs furnished by Recipient and by the amount of any insurance proceeds received by Provider.

C. Materials And Supplies-- Provider shall be reimbursed for all materials and supplies furnished by it and used or damaged during the period of assistance, except for the costs of equipment, fuel and maintenance materials, labor, and supplies, which shall be included in the equipment rate established in subsection B of this section (Section VII), unless such damage is caused by gross negligence, willful and wanton misconduct, intentional misuse, or recklessness of Provider's personnel. Provider's personnel shall use reasonable care under the circumstances in the operation and control of all materials and supplies used by them during the period of assistance. The measure of reimbursement shall be determined in accordance with 44 C.F.R. 206.228. In the alternative, the parties may agree that Recipient will replace, with like kind and quality as determined by Provider, the materials and supplies used or damaged. If such an agreement is made, it shall be reduced to writing and transmitted to the North Carolina Division of Emergency Management.

D. Record Keeping-- Recipient and NC Division of Emergency Management personnel shall provide information, directions, and assistance for record keeping to Provider's personnel. Provider shall maintain records and submit invoices for reimbursement by Recipient or the NC Division of Emergency Management using the format used or required by FEMA publications, including 44 C.F.R. part 13 and applicable Office of Management and Budget (OMB) Circulars.

E. Payment; Other Miscellaneous Matters as to Reimbursements-- The reimbursable costs and expenses with an itemized notice shall be forwarded as soon as practicable after the costs and expenses are incurred, but not later than sixty (60) days following the period of assistance, unless the deadline for identifying damage is extended in accordance with 44 C.F.R. part 206. Recipient shall pay the bill or advise of any disputed items, not later than sixty (60) days following the billing date. These time frames may be modified in writing by mutual agreement. This shall not preclude Provider or Recipient from assuming or donating, in whole or in part, the costs and expenses associated with any loss, damage, or use of personnel, equipment, and resources provided to Recipient.

Section VIII. RIGHTS AND PRIVILEGES OF PROVIDER'S EMPLOYEES

Pursuant to G.S. 166A-14, whenever Provider's employees are rendering aid and assistance pursuant to this Agreement, such employees shall retain the same powers, duties, immunities, and privileges they would ordinarily possess if performing their duties within the geographical limits of Provider.

Section IX. PROVIDER'S EMPLOYEES COVERED AT ALL TIMES BY PROVIDER'S WORKERS' COMPENSATION POLICY

Recipient shall not be responsible for reimbursing any amounts paid or due as benefits to Provider's employees under the terms of the North Carolina Workers' Compensation Act, Chapter 97 of the General Statutes, due to personal injury or death occurring during the period of time such employees are engaged in the rendering of aid and assistance under this Agreement. It is mutually understood that Recipient and Provider shall be responsible for payment of such workers' compensation benefits only to their own respective employees. Further, it is mutually understood that Provider will be entirely responsible for the payment of workers' compensation benefits to its own respective employees pursuant to G.S. 97-51.

Section X. IMMUNITY

Pursuant to G.S. 166A-14, all activities performed under this Agreement are hereby declared to be governmental functions. Neither the parties to this Agreement, nor, except in cases of willful misconduct, gross negligence, or bad faith, their personnel complying with or reasonably attempting to comply with this Agreement or any ordinance, order, rule, or regulation enacted or promulgated pursuant to the provisions of this Agreement shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

Section XI. PARTIES MUTUALLY AGREE TO HOLD EACH OTHER HARMLESS FROM LIABILITY

Each party (as indemnitor) agrees to protect, defend, indemnify, and hold the other party (as indemnitee), and its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, assessments, costs, charges, professional fees, and other expenses or liabilities of every kind and arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings, or causes of action of every kind in connection with or arising out of indemnitor's negligent acts, errors and/or omissions. Indemnitor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, etc. at indemnitor's sole expense and agrees to bear all other costs and expenses related thereto. To the extent that immunity does not apply, each party shall bear the risk of its own actions, as it does with its day-to-day operations, and determine for itself what kinds of insurance, and in what amounts, it should carry. Each party understands and agrees that any insurance protection obtained shall in no way limit the responsibility to indemnify, keep, and save harmless the other parties to this Agreement.

Notwithstanding the foregoing, to the extent that each party does not purchase insurance, it shall not be deemed to have waived its governmental immunity by law.

SECTION XII. ROLE OF THE DIVISION OF EMERGENCY MANAGEMENT

Under this Agreement, the responsibilities of the NC Division of Emergency Management are: (1) to serve as the central depository for executed agreements, to maintain a current listing of entities with their authorized representatives and contact information, and to

provide this listing to each of the entities on an annual basis; (2) to coordinate the provision of mutual aid and assistance to a requesting party, pursuant to the provisions of this Agreement; (3) to keep a record of all requests for assistance and acknowledgments; (4) to report on the status of ongoing emergency or disaster-related mutual aid and assistance as appropriate; and (5) if the parties so designate, to serve as the eligible entity for requesting reimbursement of eligible costs from FEMA and provide information, directions, and assistance for record keeping pursuant thereto.

Section XIII. AMENDMENTS

Manner-- This Agreement may be modified at any time upon the mutual written consent of the Recipient and Provider.

Addition of Other Entities-- Additional entities may become parties to this Agreement upon: (1) acceptance and execution of this Agreement; and (2) sending said executed copy of the Agreement to the NC Division of Emergency Management.

Section XIV. INITIAL DURATION OF AGREEMENT; RENEWAL; TERMINATION

This Agreement shall be binding for not less than one (1) year from its effective date, unless terminated upon at least sixty (60) days advance written notice by a party as set forth below. Thereafter, this Agreement shall continue to be binding upon the parties in subsequent years, unless canceled by written notification served personally or by registered mail upon the Director of NC Division of Emergency Management, which shall provide copies to all other parties. The withdrawal shall not be effective until sixty (60) days after notice thereof has been sent by the Director of the NC Division of Emergency Management to all other parties. A party's withdrawal from this Agreement shall not affect a party's reimbursement obligations or any other liability or obligation under the terms of this Agreement incurred hereunder. Once the withdrawal is effective, the withdrawing entity shall no longer be a party to this Agreement, but this Agreement shall continue to exist among the remaining parties.

Section XV. HEADINGS

The headings of various sections and subsections of this Agreement have been inserted for convenient reference only and shall not be construed as modifying, amending, or affecting in any way the express terms and provisions of this Agreement.

Section XVI. SEVERABILITY: EFFECT ON OTHER AGREEMENTS

Should any clause, sentence, provision, paragraph, or other part of this Agreement be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement. Each of the parties declares that it would have entered into this Agreement irrespective of the fact that any one or more of this Agreement's clauses, sentences, provisions, paragraphs, or other parts have been so declared invalid. Accordingly, it is the intention of the parties that the remaining portions of this Agreement shall remain in full force and effect without regard to the clause(s), sentence(s), provision(s), paragraph(s), or other part(s) invalidated.

In the event that parties to this Agreement have entered into other mutual aid and assistance contracts, for example pursuant to Chapter 160A of the North Carolina General Statutes, those parties agree that to the extent a request for mutual assistance is made pursuant to this agreement, those other mutual aid and assistance contracts are superseded by this Agreement.

Section XVII. EFFECTIVE DATE

This Agreement shall take effect upon its approval by the entity seeking to become a signatory to this Agreement and upon proper execution hereof.

IN WITNESS WHEREOF, each of the parties have caused this North Carolina Statewide Emergency Management Mutual Aid and Assistance Agreement to be duly executed in its name and behalf by its chief executive officer, who has signed accordingly with seals affixed and attested with concurrence of a majority of its governing board, as of the date set forth in this Agreement.

**DIVISION OF EMERGENCY MANAGEMENT
DEPARTMENT OF CRIME CONTROL AND
PUBLIC SAFETY**

WITNESS:

BY: _____

Richard H. Moore, Secretary

Division of Emergency Management

Date: _____

WITNESS:

BY: _____

William A. Dudley, Deputy Secretary

Department of Crime Control & Public Safety

Date: _____

WITNESS:

BY: _____

Chief Executive Officer — Local Government Unit

Printed Name & Title _____

Name of Unit: _____

Date: _____

APPROVED AS TO PROCEDURES:

BY: _____

J. Michael Barham, Controller

Department of Crime Control and Public Safety

Date: _____

N.C. STATEWIDE MUTUAL AID AND ASSISTANCE AGREEMENT

List of Authorized Representatives to Contact for Emergency Assistance

Name of Unit: _____

& Mailing Address: _____

Date: _____

I. PRIMARY REPRESENTATIVE:

Name: _____

Title: _____

Day Phone: () _____ Night Phone: () _____

Fax #: () _____ Pager #: () _____

II. FIRST ALTERNATIVE REPRESENTATIVE:

Name: _____

Title: _____

Day Phone: () _____ Night Phone: () _____

Fax #: () _____ Pager #: () _____

III. SECOND ALTERNATIVE REPRESENTATIVE:

Name: _____

Title: _____

Day Phone: () _____ Night Phone: () _____

Fax #: () _____ Pager #: () _____

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

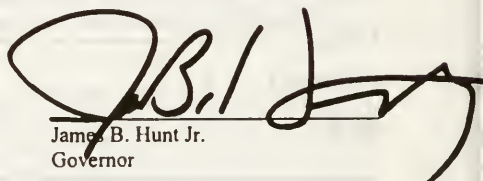
EXECUTIVE ORDER NO. 162
EXTENDING EXECUTIVE ORDER NO. 159
EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE FLOYD

By the power and authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

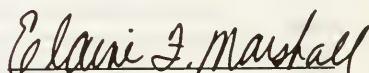
Executive Order Number 159, Emergency Relief for Damage Caused by Hurricane Floyd, is re-instituted and the provisions therein shall remain in full force and effect through November 15, 1999.

Done in the Capital City of Raleigh, North Carolina, this the 18th day of October, 1999.




James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 163 EXTENDING QUALIFIED IMMUNITY OF PROFESSIONAL ENGINEERS

WHEREAS, North Carolina General Statute § 89C-19.1 grants qualified immunity to professional engineers who voluntarily, without compensation, provide structural, electrical, mechanical, or other engineering services at the scene of a declared disaster or emergency under circumstances more fully described in the said statute; and

WHEREAS, professional engineers have been providing such voluntary services in the aftermath of Hurricane Floyd; and

WHEREAS, under North Carolina General Statute § 89C-19.1 the qualified immunity terminates forty five days after the declaration of the emergency or disaster, unless the qualified immunity period is extended by an executive order issued by the Governor under the Governor's emergency executive powers; and

WHEREAS, it is necessary and appropriate to extend the qualified immunity period.

NOW, THEREFORE, by the power vested in me as Governor by the laws and Constitution of the State of North Carolina, IT IS ORDERED:

Section 1. Qualified Immunity Period Extended

In accordance with the provisions of North Carolina General Statute § 89C-19.1, the statutorily allowed qualified immunity to professional engineers who are voluntarily, without compensation, providing structural, electrical, mechanical, or other engineering services at the scene of Hurricane Floyd declared disaster or emergency areas is hereby extended for forty five days.

Section 2. Effective Date of Extension

This extension period shall begin immediately upon the expiration of the initial forty five day qualified immunity period provided by North Carolina General Statute § 89C-19.1(b)(2).

Done in the Capital City of Raleigh, North Carolina, this the 18th day of October, 1999.



A handwritten signature in black ink, appearing to read "J.B. Hunt Jr.", written over a horizontal line.

James B. Hunt Jr.
Governor

ATTEST:

A handwritten signature in black ink, appearing to read "Elaine F. Marshall", written over a horizontal line.

Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 164

DELEGATION OF AUTHORITY TO ATTORNEY GENERAL TO ASSIST LOCAL GOVERNMENTS IN HURRICANE FLOYD RECOVERY EFFORTS

WHEREAS, I have proclaimed, pursuant to G.S. 166A-6 and G.S. 14-288.15, that a state of disaster and state of emergency exists in North Carolina due to Hurricane Floyd and resultant flood damage; and

WHEREAS, thousands of victims of Hurricane Floyd and the resultant flooding in eastern North Carolina have incurred severe damages to their homes, businesses and other property; and

WHEREAS, the victims of such damages are in great need of legitimate, honest, and competent contractors and other service providers to perform necessary repairs, reconstruction, cleanup and other remedial services; and

WHEREAS, based on prior experience, I am concerned that homeowners and business owners contracting for such services may be taken advantage of by unscrupulous contractors and service providers, and that it is the responsibility of the State of North Carolina to minimize such risk to the citizens of the State; and

WHEREAS, there is a need for the establishment of contractor and service provider monitoring programs to assist the victims of Hurricane Floyd in obtaining the timely services of legitimate, honest and skilled professionals while avoiding victimization by unscrupulous practices; and

WHEREAS, local governments may have insufficient resources in this time of crisis to adequately protect their citizens from unscrupulous practices; and

WHEREAS, the Attorney General has offered the services of his office to support local government efforts to monitor contracting practices and to provide other legal assistance in severely impacted counties; and

WHEREAS, I have determined that the interests of local governments and citizens in severely impacted counties will benefit from the assistance of the Attorney General in this effort.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

1. The Attorney General shall, as soon as reasonably possible, contact local officials in severely impacted counties and offer the assistance of his office in establishing local programs to monitor and deter unscrupulous contracting practices in connection with Hurricane Floyd recovery efforts.
2. The Attorney General is authorized to utilize such law enforcement and other personnel within his department as may be necessary, in his judgment, to provide assistance requested by local governments.
3. Local governments may establish and, if requested by local governments the Attorney General may assist in the establishment of contractor monitoring programs in flood or hurricane damaged areas which may include:
 - a. Verification of any professional or other business licenses issued to contractors by their state of residence or principal place of business.
 - b. Information verifying compliance with such insurance requirements as may be mandated by North Carolina laws.
 - c. A background check of state and national criminal history records upon submission of appropriate fingerprint cards.
 - d. Execution of a sworn affidavit by the contractor certifying that all work performed shall be for a price reasonable under the circumstances and consistent with the quality generally expected of that particular trade or profession.
 - e. Procedures for revocation of the authority to do business in flood or hurricane damaged areas upon evidence that unacceptable practices or other violations of the program have occurred.

- f. Procedures for referral of unlawful activities or violations of this Executive Order to appropriate authorities for expeditious prosecution.
- g. Random or systematic monitoring and identity checks of contractors and service providers by law enforcement authorities to further program compliance and the minimization of unethical practices.

4. All state and local law enforcement authorities are directed to provide such assistance, including enforcement activities, as the Attorney General may request in implementing this program.

5. Contractor monitoring programs established by local governments in accordance with this Order shall not be subject to conflicting rules or regulations issued by any state or local governmental entity.

6. The Attorney General is further authorized, in his discretion, to provide such other legal or law enforcement services as may be requested by local governments or determined by the Attorney General to be in the best interest of the State of North Carolina.

7. This Executive Order is effective immediately, and shall remain in effect until rescinded.

Done in the Capital City of Raleigh, North Carolina this the 18th day of October, 1999.




James B. Hunt Jr.
Governor

ATTEST:


Elaine F. Marshall
Secretary of State

State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 165
EXTENDING EXECUTIVE ORDER NO. 159
EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE FLOYD

By the power and authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Executive Order Number 159, Emergency Relief for Damage Caused by Hurricane Floyd, as amended by Executive Order Number 162, is hereby re-instituted and the provisions therein shall remain in full force and effect through January 31, 2000.

Done in the Capital City of Raleigh, North Carolina, this the 15th day of November, 1999.

A handwritten signature in dark ink, appearing to read "James B. Hunt Jr.", written over a horizontal line.

James B. Hunt Jr.
Governor

ATTEST:

A handwritten signature in dark ink, appearing to read "Elaine F. Marshall", written over a horizontal line.

Elaine F. Marshall
Secretary of State



State of North Carolina



JAMES B. HUNT JR.
GOVERNOR

EXECUTIVE ORDER NO. 166 EXTENDING EXECUTIVE ORDERS

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Extension

The following Executive Orders, as amended, are extended two years from the effective date provided below:

Executive Order No. 2, Small Business Council.

Executive Order No. 11, Governor's Council of Fiscal Advisors.

Executive Order No. 15, Coordinating Committee on the Americans with Disabilities Act.

Executive Order No. 16, The Geographic Information Coordinating Council and the Center for Geographic Information and Analysis.

Executive Order No. 43, North Carolina State Health Coordinating Council.

Executive Order No. 45, Governor's Initiative to Strengthen North Carolina Historically Black Colleges and Universities.

Executive Order No. 50, North Carolina Sports Development Commission.

Executive Order No. 51, North Carolina Film Council.

Executive Order No. 75, Creation of Regional Councils and a Coordinating Council to Support Sound Environmental Management in the Albemarle-Pamlico Estuarine Study Region.

Executive Order No. 76, North Carolina Motor Carrier Advisory Committee.

Executive Order No. 84, North Carolina Home Furnishings Export Council.

Executive Order No. 127, North Carolina Board of Ethics.

Section 2. Effective Date

This order shall be effective the first day of January, 2000.

Done in the Capital City of Raleigh, North Carolina, this the 30th day of

December, 1999.



A handwritten signature in dark ink, appearing to read "James B. Hunt Jr.", is written over a horizontal line.

James B. Hunt Jr.
Governor

ATTEST:

A handwritten signature in dark ink, appearing to read "Elaine F. Marshall", is written over a horizontal line.

Elaine F. Marshall
Secretary of State

NUMERICAL INDEX TO SENATE AND HOUSE BILLS

1999 GENERAL ASSEMBLY REGULAR AND EXTRA SESSIONS 1999

Ratified Number refers to the Session Law number except when preceded by an R, in which case it refers to the Resolution number. ES refers to bills introduced and ratified during the 1999 Extra Session.

SENATE BILLS

<i>S.B.</i>	<i>Ratified Number</i>	<i>S.B.</i>	<i>Ratified Number</i>	<i>S.B.</i>	<i>Ratified Number</i>
6	2	198	113	329	145
7	356	212	425	331	363
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